

IN THE MATTER OF THE
THE APPLICATION OF
JOSEPH N. INGOLIA, JR., ET UX
FOR VARIANCE ON PROPERTY
LOCATED ON THE NORTH SIDE
HOPKINS ROAD, 240' EAST OF
PINEHURST ROAD
(218 HOPKINS ROAD)
9TH ELECTION DISTRICT
4TH COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 92-5-A
* * * * *

O P I N I O N

The Petitioner, Joseph N. Ingolia, Jr., has filed an appeal from the decision of the Deputy Zoning Commissioner dated October 9, 1991, wherein his request for a variance from Section 301.1 of the Baltimore County Zoning Regulations (BCZR) to permit a deck with a rear yard setback of 11 feet in lieu of the minimum required 37.6 feet was denied. The Petitioner appeared and offered testimony in support of his request for the variance, represented by his father, Joseph N. Ingolia, Sr., Esquire. The Protestant, the Rodgers Forge Community Association, appeared represented by Keith Truffer, Esquire.

The subject property is the Petitioner's residence located at 218 Hopkins Road in the Rodgers Forge community. It is zoned D.R. 10.5 and is improved with a single-family townhouse and a rear deck which is the subject of this variance request. The Rodgers Forge community consists of approximately 1,700 homes, a community that was built and developed in the late 1930s and 1940s.

Petitioner purchased his property in 1989 and shortly thereafter commenced to have the subject deck constructed without securing a permit from Baltimore County. A zoning violation was

Case No. 92-5-A Joseph N. Ingolia, Jr., et ux 2

issued for the property on the basis that the deck extended beyond the setback line and was less than 37.6 feet from the rear property line. Receiving the violation notice, the Petitioner filed the request for a variance with the Zoning Office so that he would be able to allow the deck to exist unaltered.

Mr. Ingolia testified that the reason for constructing the deck was because of his difficulty with getting grass to grow in the rear yard and the existing muddy condition. He further stated that he erected the deck because they were having problems with the adjacent property owner's dog jumping over the fence and into their yard, and reference was made on one occasion that the Petitioner was bitten by the dog. In the Petitioner's opinion, the rear yard was unsightly in its appearance, and the construction of the deck would enhance the rear yard appearance and allow his family to have the use of the rear yard. He contracted with I.L.K. Contractors in April 1990 and delegated to the contractor the authority to obtain the necessary permits to construct the deck. No building permit was ever obtained.

Mr. Ingolia informed the Board that prior to construction he consulted neighbors in the area and that they had no objections to the deck as constructed. The deck is 24 feet in length and extends from the rear of the home to the rear wall of the garage and farther along the side of the garage almost to the end of the property, as disclosed in the photographs. Finally, Mr. Ingolia testified that he was not aware of any covenants running with the

Case No. 92-5-A Joseph N. Ingolia, Jr., et ux 3

land or restrictions of any nature being imposed upon his property by the community association.

The community association, through its President, Donald Grauel, testified in opposition to the existing deck and also offered the testimony of Mary L. Wood, a realtor, who was familiar with the neighborhood, having been an agent for several sales in the community. The Association objects to the requested variance on the basis that the deck is outside the zoning setback line, is too large, is in violation of the restrictive covenants of the Association, and is not in keeping with the uniformity and character of the neighborhood. Much testimony was offered to establish that the property is subject to restrictions of record which are filed in the Land Records for Baltimore County. As pointed out at the time of the hearing, such restrictions are a contractual matter, if such contract rights exist, between the Petitioner and his Association, and the enforceability of those restrictions is not within the jurisdiction of this Board.

Mary Wood testified in her capacity as a real estate sales agent that the deck was not in keeping with the character of the neighborhood, and that the large deck serves to detract from the value of the subject property and other properties within the community on the basic principle that it deviates from uniformity.

The Board has received and reviewed Memorandums submitted by both parties in these proceedings. Both parties in their Memorandums have set out the law to be applied by this Board in

Case No. 92-5-A Joseph N. Ingolia, Jr., et ux 4

deciding the issue of whether the area variance should be granted. Section 307.1 of the BCZR states in part:

"...(T)he County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations...only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship.... Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area...regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare...."

This regulation, which took effect on March 2, 1992, removed the term "substantial" from the previously existing variance regulation and further added that special circumstances or conditions must exist that are peculiar to the land or structure which is the subject of the variance requested. The Board recognizes that at the time the variance request was filed with the Zoning Commissioner the old regulation was in effect, and that at the time of the de novo hearing before this Board the current regulation was in effect. The Board has considered the current regulation as well as the old regulation, and under each standard does not feel that the Petitioner has met the necessary burden for the granting of the variance. Under each test, it is clear to this Board that if the variance were granted it would seriously impact upon the architectural uniformity of the community and the property values of the homes. This community is one which contains over 1,700 homes, all of which have narrow roads, street and alleys with

Case No. 92-5-A Joseph N. Ingolia, Jr., et ux 5

little existing available open space. To permit a property owner the use of a deck of the size constructed in these proceedings would do substantial injustice to the other properties in the neighborhood and affect the uniformity of size and design. The Board does not believe that the reasons given for the deck are sufficient to meet the level of "special circumstances or conditions" to justify the existing deck. The fact that there is difficulty with getting grass to grow and that an adjacent property owner has a dog which jumps the fence and is disturbing to the Petitioner is not sufficient justification to permit the deck. The Board has difficulty in seeing how this deck serves to alleviate the alleged problem concerning the dog. The Board further has difficulty concluding that the Petitioner's family is being denied the use and enjoyment of their rear yard without the deck. Further, the fact that grass may not grow in the rear yard is not a sufficient undue hardship imposed upon the property owner.

The Board will also note that the Petitioner suggested in his testimony that a variance was not required for the reason that the deck was freestanding and not attached to the rear wall of the home. This argument is spurious. The photographs were offered into evidence, and it is clear that the deck, whether physically attached to the rear wall of the house or not, does in fact join to it. To make a determination that the deck is freestanding under the facts as presented in this case would be reaching for a technicality and permitting the Petitioner to avoid compliance with

Case No. 92-5-A Joseph N. Ingolia, Jr., et ux 6

the BCZR.

This Board does not believe, however, that substantial injustice would be done to the community if the requested variance was granted in part as opposed to the entire variance being granted. At present the deck is entirely too large and is all encompassing in relationship to the full size of the rear yard. Protestants' Exhibit No. A, which summarizes the dimensions taken from the Petitioner's testimony, clearly reflects that the improvements of the deck, garage and porch comprise 58 percent of the total rear yard. This Board finds that a variance from the present existing setback requirement of 37.6 feet should be granted in part so as to permit the deck to be no larger than the area from the rear of the home to the rear wall of the existing garage (not the garage door wall). No testimony was offered to provide this Board with the exact footage that should be granted for the setback line, and the Board can only locate the distance by making reference to the rear wall of the garage, and will so order as such. Should the parties provide this Board with the exact measurement, this Board will subsequently issue an amended order reflecting same.

O R D E R

FOR THE ABOVE REASONS, IT IS THEREFORE this 28th day of September, 1992 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Zoning Variance from Section

Case No. 92-5-A Joseph N. Ingolia, Jr., et ux 7

301.1 of the Baltimore County Zoning Regulations to permit a rear yard setback is GRANTED in part to provide the setback line being the rear wall of the existing garage (not the garage door wall of the garage) in lieu of the required 37.6 feet for an open projection (deck); and it is further

ORDERED that this Board will subsequently issue an amended order as to the exact footage of the rear yard setback upon submittal of proper documentation by the parties establishing the exact measurement.

Any appeal from this decision must be made in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Michael B. Sauser, Acting Chairman

John G. Disney

Harry E. Buchheister, Jr.

IN RE: PETITION FOR
ZONING VARIANCE
N/S Hopkins Road, 240' E of
Pinehurst Road
(218 Hopkins Road)
9th Election District
4th Councilmanic District

* BEFORE THE
* COUNTY BOARD
* OF APPEALS OF
* BALTIMORE COUNTY

Joseph N. Ingolia, Jr., et ux * Cas No. 92-5-A
Petitioners * * * * *

PROTESTANTS' RODGERS FORGE COMMUNITY, INC.'S
MEMORANDUM IN OPPOSITION TO REQUESTED VARIANCE

I. INTRODUCTION.

The Petitioner's appeal was taken from an Order of the Deputy Zoning Commissioner denying a request for variance from Section 301.1 of the Baltimore County Zoning Regulations to permit a deck with a rear yard set back of 11 feet rather than the otherwise required 36.7 feet^{1/}

^{1/} Petitioner has suggested that a variance is not required because the deck is free-standing. Although the term "attached" is included in Section 301.1, the spirit and intent of that Section is to prevent a property owner from building an open porch or deck which encroaches more than twenty-five percent (25%) into the minimum required rear yard. This spirit and intent would be defeated if the property owner would be able to avoid this regulation merely by providing a nominal separation between the main structure and the porch. Moreover, even if this structure is considered a free-standing accessory structure, it nevertheless violates Section 400.1 of the Baltimore County Zoning Regulations, which requires that such structures shall not occupy more than forty percent (40%) of the rear yard. If the Petitioner's deck is permitted to remain, fully fifty-eight percent (58%) of the Petitioner's rear yard will be covered in some way by the existing deck, garage, and porch (see Petitioner's Exhibit No. 4 and Exhibit "A" to this Memorandum).

ROYSTON, MUELLER,
MCLAN & REID
SUITE 400
102 N. FENNELL
TOWSON, MARYLAND
21204-4878
410-281-1900

Given the recent Attorney General's Decision, *supra*, which notes the lesser burden in showing practical difficulty, the cited case law and the facts of this case, we respectfully submit there is a need to act objectively with a modicum of common sense, reason and fairness. It is and should be a matter of judicial notice that with the passage of the years Rodgers Forge and communities like it have changed. Some of the decks and improvements one can see by simply driving by the properties probably were never envisioned by the original zoning regulations. (See Petitioners Ex. 1A to I, a series of photographs.) Whatever may have been the spirit of the original ordinance, most of the decks constructed today are expensive and necessary and add to, rather than detract from property values. They comport with preserving and enhancing public safety and welfare. They are much more desirable than open yards in disarray where one often finds mud, overgrown weeds, boats and an assortment of junk.

If, in the petitioners' case their improvement truly did detract from the neighborhood as a whole or did not conform to alterations made in the neighborhood or was not in accord with the reasonable requests of their neighbors then one might balance those considerations against the practical difficulty petitioners will experience if the variance is not granted. But here, there are no such countervailing considerations. (Petitioner's Ex. 10).

It should be noted that Section 307.1 of the BCZR in whole or in part may well be invalid. It grants variances where strict compliance with the Zoning Regulations would result in practical difficulty or unreasonable hardship (emphasis supplied). Since Baltimore County derives its authority from the State and Section 1 of Article 66A which provides that a variance may be granted on a showing of unreasonable hardship or practical difficulty, the question arises as to the meaning of the word, "unreasonable", in Article 66A and the word, "unnecessary," in Section 307.1 of the BCZR. Certainly, the words have a different

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literal meaning and probably a different legal meaning. Since the BCZR was only recently amended in 1992 we thought it appropriate to call this diversity to the attention of the Board. We could make argument both as to jurisdiction and on the merits relating to the diversity and relate it to this case. However, this brief is already over-long and we leave consideration of it to the Board's discretion.

Nevertheless, it must be noted that to the extent the protestants argue that the petitioners are not suffering unreasonable hardship, their argument relates to an invalid statute. The same is true of any other County Zoning Regulations which became effective on March 2, 1992, which use a test that differs from Section 1 of Article 66A of the Maryland Codes.

In summary, the petitioners submit that:

1. A variance is not needed because the improvement is free standing and is not, "Attached to the main building," as Section 301.1 of the BCZR requires. This specific language is clear and unequivocal and not subject to judicial interpretation. It cannot be dismissed as defeating the spirit and intent of the law since it is part of the law itself and frames the statutes, "spirit and intent". Further, the improvement does not violate any other section of the BCZR, including Section 400.1 since it does not occupy more than 40% of the rear yard. Indeed, this proceeding does not involve that issue and it would constitute a denial of the petitioners' right to hearing to decide the issue on this record.
2. Alternatively, the variance should be granted because the facts are that if it is not granted the petitioners will experience practical difficulty within the meaning of Section 307.1 of the BCZR. Remember their back yard was full of ruts because it took rainwater drainage from other houses. They could not use the yard.

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3. There is nothing in this record to support a finding that the granting of a variance would impact adversely on the architectural uniformity of the neighborhood or that property values would decrease. Indeed, protestants presented only the self-serving testimony of one witness who happens to be a Community Association officer and a real estate salesperson. Her testimony that a \$3700.00 deck would decrease property values is absurd and is unsupported by any empirical evidence or even common sense. This is a ground level, free standing improvement. Her testimony that there is, "nothing like it in the neighborhood," is wrong. The structure in photograph Exhibit 3-I is just like it. Also, one is constrained to inquire how a free standing, ground level deck could interfere with, "sight lines between properties". If Ms. Wood is referring to the fence next to the deck, the petitioners agree it does affect major sight lines and would readily remove the fence if the Board so requires.
4. The record in this proceeding does not support a finding that the free standing deck would affect the, "aesthetic ambience of 1800 homes in the Rodgers Forge Community Association" as the Board found in *Alpern supra*. *Alpern* involved an enclosed patio on the side of the house -- another room. It did not involve a ground level deck. Further, this record establishes that whatever may have been told to the Board about the Community Association in *Alpern* it does not now represent any 1800 homes in Rodgers Forge. As has been noted it may represent as little as 20%. Whatever the record was in *Alpern* and however well-intentioned the Association may be, the fact is it has no legal right to require these petitioners and probably many other Rodgers Forge residents to make application to it before they can make any improvements to their property. The covenants originally required by Keely expired in 1960 as Keely intended and the Association's averments and

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inferences that it represents and protects the residents of Rodgers Forge is an attempt by those in control to mislead and to use the Zoning Board, just as they have misled the very people they profess to represent. Finally, we respectfully move to enter into the record Petitioners' Exhibit 10, which is eleven statements from Petitioners' neighbors relating to Petitioners' improvement. They are relevant in rebutting the testimony in the record from the Association regarding the improvements, "derogation of uniformity" and diminution of property values, which testimony relates to alleged covenants and was unexpected. It is submitted that Petitioners' are satisfied to rely on the statements rather than move to reopen the record to allow for rebuttal testimony.

Joseph N. Ingolia, Jr.
Petitioner

IN RE: PETITION FOR ZONING VARIANCE
N/S Hopkins Road, 240' E of
Pinchurst Road
(218 Hopkins Road)
9th Election District
4th Councilmanic District
Joseph N. Ingolia, Jr., et ux
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 92-5-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a variance from Section 301.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a rear yard setback of 11 feet in lieu of the minimum required 37.6 feet for an open projection (deck) in accordance with Petitioner's Exhibit 7.

The Petitioners, by Joseph Ingolia, Jr., appeared, testified and were represented by Joseph Ingolia, Sr., Esquire, who appeared as counsel for his son. Appearing as Protestants in the matter were Donald Grauel, President, Rogers Forge Community Association, and Mimi Wood, a resident of the area. The Protestants were represented by Keith Truffer, Esquire.

Testimony indicated that the subject property, known as 218 Hopkins Road, consists of 2,310 sq.ft. zoned D.R. 10.5 and is improved with a single family townhouse dwelling and a deck which is the subject of this hearing. Petitioners were advised to file the instant Petition upon receipt of a zoning violation notice from this Office. Testimony indicated Petitioners purchased the subject property in February 1989. Shortly thereafter, Petitioners began having problems with the neighbor's dog jumping the fence into their yard, and on one occasion, the Petitioner was actually bitten by the dog. Further testimony indicated that Petitioners also had trouble getting grass to grow in their rear yard and that storm water runoff had caused soil to erode, resulting in an unsightly condition

to exist on their property. Petitioner testified that he contracted with ILK Contractors in April 1990 to construct the subject deck to alleviate the problem with the neighbor's dog and permit him to use the rear yard which, in his opinion, was unusable due to the erosion problem and lack of grass. Testimony indicated that Petitioner relied on his contractor to obtain all necessary permits from Baltimore County to construct the deck. In actuality, no valid building permit was ever obtained.

The President of the contracting company, Ira Katz, appeared and testified that he hired a sub-contractor to do the work. He testified that the sub-contractor was responsible to obtain the required building permit but failed to do so.

Donald Grauel, President of the Rogers Forge Community Association, and Mimi Wood, a resident in the community, appeared and testified in opposition to the relief requested. The substance of their testimony stressed the importance of uniformity in developing properties in this community. Testimony indicated the Association strives to only permit exterior alterations that conform with the entire neighborhood. The Protestants believe that the subject deck is very much out of the ordinary and is out of character with existing improvements in the community.

Testimony was presented by both the Petitioners and the Protestants as to the restrictions and covenants that govern Rogers Forge. Said covenants and restrictions are an entirely different matter and whether or not the Petitioners' deck conforms with the covenants for Rogers Forge is not an issue raised before the Deputy Zoning Commissioner.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and

ORDER RECEIVED FOR FILING

Date 10/1/91
By Bo

- 2 -

his property. *McLean v. Soley*, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

After due consideration of the testimony and arguments presented, there is insufficient evidence to allow a finding that the Petitioners would experience practical difficulty or unreasonable hardship if the requested variance were denied. The sum and substance of the testimony was that had a valid permit been obtained, the required variance would have surfaced prior to construction of Petitioners' deck. The Petitioners have failed to show that compliance would unreasonably prevent the use of the property or be unnecessarily burdensome. Therefore, the variance requested must be denied.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be denied.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 1st day of October, 1991 that the Petition for Zoning Variance from Section 301.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a rear yard setback of 11 feet in lieu of the

ORDER RECEIVED FOR FILING

Date 10/1/91
By Bo

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minimum required 37.6 feet for an open projection (deck) in accordance with Petitioner's Exhibit 7, be and is hereby DENIED.

TMK:ljs

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

ORDER RECEIVED FOR FILING

Date 10/1/91
By Bo

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Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

111 West Chesapeake Avenue
Towson, MD 21204

887-3353

October 9, 1991

Mr. Joseph Ingolia, Jr.
218 Hopkins Road
Baltimore, Maryland 21221

RE: PETITION FOR ZONING VARIANCE
N/S Hopkins Road, 240' E of Pinehurst Avenue
(218 Hopkins Road)
9th Election District - 4th Councilmanic District
Joseph N. Ingolia, Jr., et ux - Petitioners
Case No. 92-5-A

Dear Mr. Ingolia:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Zoning Variance has been denied in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Radcliffe at 887-3391.

Very truly yours,
Timothy M. Kotroco
TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

cc: Keith Truffer, Esquire
102 W. Pennsylvania Avenue, Suite 600, Towson, Md. 21204-4575

Mr. Donald Grauel
117 Hopkins Road, Baltimore, Md. 21212

Ms. Mimi Wood
303 Old Trail, Baltimore, Md. 21212

People's Counsel

File

Petition for Variance

92-5-A

to the Zoning Commissioner of Baltimore County

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 218 of the Zoning Ordinance of Baltimore County, to the following reasons: (Indicate hardship or practical difficulty)

1. The property is located in the 9th Election District, 4th Councilmanic District, and is zoned R-1. The property is currently used as a residential lot. The property is located on a narrow lot and the existing structure is a small building. The property is located on a narrow lot and the existing structure is a small building. The property is located on a narrow lot and the existing structure is a small building.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contract Purchaser/Lessee:
(Type or Print Name)
Signature
Address
City and State

Legal Owner(s):
(Type or Print Name)
Signature
Address
City and State

Attorney for Petitioner:
(Type or Print Name)
Signature
Address
City and State

Attorney's Telephone No.:
City and State

ORDER RECEIVED FOR FILING
Date 10/9/91
By [Signature]

I/We do solemnly declare and affirm under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this petition.

Legal Owner(s):
(Type or Print Name)
Signature
Address
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted
Address
City and State

ESTIMATED LENGTH OF HEARING (1/2HR) + 1HR.
AVAILABLE FOR HEARING (1/2HR) + 1HR.
MON./TUES./WED. - NEXT TWO MONTHS
ALL OTHER
REVIEWED BY: [Signature] DATE: 10/9/91

ZONING DESCRIPTION

Beginning at a point on the north side of Hopkins Road which is 24 feet wide at the distance of 240 feet east of the centerline of the nearest improved intersecting street, Pinehurst Road, which is 24 feet wide. Being in the subdivision of Rodgers Forge as recorded in Baltimore County Deed Reference 8126/366, containing 2310 square feet or .05 acres in lot. Also known as 218 Hopkins Road and located in the 9th Election District, and 4th Councilmanic District.

92-5-A

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 9th Date of Posting: September 6, 1991

Posted for: [Signature]

Petitioner: Joseph N. Ingolia, Jr., et ux

Location of property: N/S Hopkins Road, 240' E of Pinehurst Avenue, 218 Hopkins Road

Location of Signs: On front of 218 Hopkins Road

Remarks: [Signature]

Posted by: [Signature] Date of return: September 13, 1991

Number of Signs: 1

10/15/92 sign down Reposted: 11/19/92

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 9th Date of Posting: 11-5-91

Posted for: [Signature]

Petitioner: Joseph N. Ingolia, Jr., et ux

Location of property: N/S Hopkins Road, 240' E of Pinehurst Avenue, 218 Hopkins Road

Location of Signs: On front of 218 Hopkins Road

Remarks: Reposted with new sign & post

Posted by: [Signature] Date of return: 11-7-91

Number of Signs: 1

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the proposed Variance from Section 218 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland 21204 as follows:

Case Number: 92-5-A
N/S Hopkins Road, 240' E of Pinehurst Avenue
218 Hopkins Road
9th Election District
4th Councilmanic District
Petitioner(s): Joseph N. Ingolia, Jr., et ux
Hearing Date: Wednesday, Sept. 25, 1991 at 10:30 a.m.

Variance: to allow a rear setback of 11 ft. for an open projection (deck) in lieu of the required 37-1/2 ft.

Zoning Commissioner of Baltimore County
TTJ-009 August 6

CERTIFICATE OF PUBLICATION

TOWSON, MD., 8/8, 1991

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 8/8, 1991.

THE JEFFERSONIAN,
S. Zeke Olson
Publisher

\$84.29

CERTIFICATE OF PUBLICATION

TOWSON, MD., 8/8, 1991

THIS IS TO CERTIFY, that the annexed advertisement was published in TOWSON TIMES, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 8/8, 1991.

TOWSON TIMES,

S. Zeke Olson
Publisher

\$84.29

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt

Date: 7/25/91 Account: R-001-6150 Number: M9200182

APPEAL FEES	QTY	PRICE
100 OF ALL OTHER ORDERS	1	\$125.00
150 POSTING SIGNS / ADVERTISING	1	\$125.00
TOTAL:		\$250.00

LAST NAME OF OWNER: INGOLIA

Please Make Check Payable To Baltimore County \$150.00
BN C011:43AM11-07-91

Cashier Validation

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21204

887-3353

DATE: _____

Joseph and Karen Ingolia, Jr.
218 Hopkins Road
Baltimore, Maryland 21221

RE:
Case Number: 92-5-A
N/S Hopkins Road, 240' E. Pinehurst Avenue
218 Hopkins Road
9th Election District - 4th Councilmanic
Petitioner(s): Joseph N. Ingolia, Jr., et ux

Dear Petitioner(s):

Please be advised that \$_____ is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID AND THE ZONING SIGN & POST SET(S) RETURNED ON THE DAY OF THE HEARING OR THE OTHER SIGNAL NOT ISSUE. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please make your check payable to Baltimore County, Maryland. Bring the check and the sign & post set(s) to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland fifteen (15) minutes before your hearing is scheduled to begin.

ZONING COMMISSIONER
BALTIMORE COUNTY, MARYLAND

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21204

887-3353

JULY 15, 1991

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland 21204 as follows:

Case Number: 92-5-A
N/S Hopkins Road, 240' E. Pinehurst Avenue
218 Hopkins Road
9th Election District - 4th Councilmanic
Petitioner(s): Joseph N. Ingolia, Jr., et ux
HEARING: THURSDAY, SEPTEMBER 17, 1991 at 9:00 a.m.

Variance to allow a rear setback of 11 ft. for an open projection (deck) in lieu of the required 37-1/2 ft.

J. Robert Huiea
Zoning Commissioner of Baltimore County

cc: Joseph and Karen Ingolia, Jr.

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt

Date: 7/01/91 Account: R-001-6150 Number: H9200001

PUBLIC HEARING FEES	QTY	PRICE
010 ZONING VARIANCE (VRL)	1	\$35.00
TOTAL:		\$35.00

LAST NAME OF OWNER: INGOLIA

Please Make Check Payable To Baltimore County \$150.00
BN C011:43AM11-07-91

Cashier Validation

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt

Date: 7/25/91 Account: R-001-6150 Number: M9200182

PUBLIC HEARING FEES	QTY	PRICE
000 POSTING SIGNS / ADVERTISING	1	\$109.29
TOTAL:		\$109.29

LAST NAME OF OWNER: INGOLIA

Please Make Check Payable To Baltimore County \$109.29
BN C011:43AM11-07-91

Cashier Validation



1 West Chesapeake Avenue
Towson, MD 21204

887-3353

September 11, 1991

Mr. & Mrs. Joseph N. Ingolia
218 Hopkins Road
Baltimore, MD 21212

RE: Item No. 01, Case No. 92-5-A
Petitioner: Joseph N. Ingolia, et ux
Petition for Variance

Dear Mr. Ingolia:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

IT WOULD BE APPRECIATED IF YOU WOULD RETURN YOUR WRITTEN COMMENTS TO MY OFFICE, ATTENTION JULIE WINIARSKI. IF YOU HAVE ANY QUESTIONS REGARDING THIS, PLEASE CONTACT HER AT 887-3391.

Very truly yours,

James E. Dyer
JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:jw

Enclosures



111 West Chesapeake Avenue
Towson, MD 21204

887-3353

Your petition has been received and accepted for filing this 16th day of July, 1991.

Arnold Jablon
ARNOLD JABLON
DIRECTOR

Received By:

James E. Dyer
Chairman,
Zoning Plans Advisory Committee

Petitioner: Joseph N. Ingolia, et ux

Petitioner's Attorney:

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: August 15, 1991
Zoning Administration and
Development Management

FROM: Pat Keller, Deputy Director
Office of Planning and Zoning

SUBJECT: Joseph Ingolia, Item No. 1
Fulte Home Corporation, Item No. 35

In reference to the Petitioners' requests, staff offers no comments.

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3211.

PK/JL/pat

ITEM1/ZAC1

Rec'd 8/16/91
jw



700 East Joppa Road Suite 901
Towson, MD 21204-5500

(301) 887-4500

JULY 31, 1991

J. Robert Haines
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

RE: Property Owner: JOSEPH N. INGOLIA, JR.

Location: #218 HOPKINS ROAD

Item No.: 1 Zoning Agenda: JULY 16, 1991

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: *Pat Keller* 7/31/91 Noted and Approved *Pat Keller* 7/31/91
Planning Group Fire Prevention Bureau
Special Inspection Division

JK/REK

Rec'd 8/1/91
jw

BUREAU OF TRAFFIC ENGINEERING
DEPARTMENT OF PUBLIC WORKS

DATE: August 29, 1991

TO: Mr. Arnold Jablon, Director
Office of Zoning Administration
and Development Management

FROM: Rahee J. Famili

SUBJECT: Z. A. C. Comments

Z. A. C. MEETING DATE: July 16, 1991

This office has no comments for items number 477, 510, 1, 2, 5 and 8.

Rahee J. Famili
Rahee J. Famili
Traffic Engineer II

RJF:bza

Rec'd 9/3/91
jw

INTER-OFFICE CORRESPONDENCE

TO: James E. Dyer DATE: July 15, 1991
Zoning Supervisor

FROM: James H. Thompson
Zoning Enforcement Coordinator

RE: Item No. 1
Petitioner: Joseph & Karen Ingolia

VIOLATION CASE # C-91-861

LOCATION OF VIOLATION 218 Hopkins Road

DEFENDANT Joseph and Karen Ingolia

ADDRESS 218 Hopkins Road Baltimore, Maryland 21212

Please be advised that the aforementioned petition is the subject of an active violation case. When the petition is scheduled for a public hearing, please notify the following persons:

NAME	ADDRESS
The Rodgers Forge Community, Inc.	P.O. Box 4631 Baltimore, Maryland 21212

Keith R. Truffer, Esquire Royston, Mueller, McLean & Reid	102 W. Pennsylvania Avenue Towson, Maryland 21204
--	--

After the public hearing is held, please send a copy of the Zoning Commissioner's Order to the Zoning Enforcement Coordinator, so that the appropriate action may be taken relative to the violation case.

cc: Gwen Stephens
Development Control

eoh/



111 West Chesapeake Avenue
Towson, MD 21204

887-3353

July 26, 1991

Joseph and Karen Ingolia
218 Hopkins Road
Baltimore, Maryland 21212

Re: Case Number(s): 92-5-A
218 Hopkins Road
Petitioner(s): Joseph and Karen Ingolia

Dear Petitioners:

This to confirm our telephone conversation of July 24, 1991, where you requested postponement of the scheduled hearing with regard to the above captioned matter. Accordingly, the case has been pulled from September 17, 1991 docket.

Notice of the new hearing date will be forwarded to you shortly.

Very truly yours,

G. G. Stephens
G. G. Stephens
(301) 887-3391

cc: The Rogers Forge Community, Inc.
Keith R. Truffer, Esq.

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21204

887-3353

October 30, 1991

Baltimore County Board of Appeals
County Office Building, Room 315
Towson, Maryland 21204

RE: Petition for Zoning Variance
N/S Hopkins Road, 240' E of Pinehurst Road
(218 Hopkins Road)
9th Election District, 4th Councilmanic District
JOSEPH N. INGOLIA, JR. ET UX - Petitioner
Case No. 92-5-A

Dear Board:

Please be advised that an appeal of the above-referenced case was filed in this office on October 25, 1991 by Joseph N. Ingolia, Jr., Petitioner. All materials relative to the case are being forwarded herewith.

Please notify all parties to the case of the date and time of the appeal hearing when it has been scheduled. If you have any questions concerning this matter, please do not hesitate to contact this office.

Very truly yours,
Lawrence E. Schmidt
Zoning Commissioner

LES:cer

Enclosures

cc: Joseph & Karen Ingolia, 218 Hopkins Road, Baltimore, MD 21212
Keith Truffer, Esquire, 102 W. Pennsylvania Ave., Towson, MD 21204
Donald Grauel, 117 Hopkins Road, Baltimore, MD 21212
Mini Wood, 303 Old Trail, Baltimore, MD 21212
People's Counsel of Baltimore County
Rm. 304, County Office Bldg., Towson, Md. 21204

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21204

887-3353

July 29, 1991

Joseph and Karen Ingolia, Jr.
218 Hopkins Road
Baltimore, Maryland 21212

Re: Case Number(s): 92-5-A
Petitioner(s): Ingolia
Location: 218 Hopkins Road

Dear Petitioners:

The above matter, previously set to be heard on September 17, 1991, has been postponed and rescheduled for WEDNESDAY, SEPTEMBER 25, 1991 at 10:30 a.m.

Very truly yours,
G. G. Stephens
(301) 887-3391

cc: The Rogers Forge Community, Inc.
Keith R. Truffer, Esq.

1/14/92 - Following parties notified of hearing set for April 7, 1992 at 1:00 p.m.:

Mr. and Mrs. Joseph Ingolia
Keith Truffer, Esquire
Mr. Donald Grauel
Ms. Mini Wood
People's Counsel for Baltimore County
P. David Fields
Pat Keller
Public Services
Lawrence E. Schmidt
Timothy M. Kotroco
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon

3/23/92 - Request for PP from J. Ingolia /out of town on employment search week of hearing.

3/24/92 - PP granted; notice sent to above parties as amended for hearing scheduled for Thursday, June 18, 1992 at 1:00 p.m.

6/18/92 - Hearing before Board; Memorandums due from parties in 15 days (July 6, 1992 due to Holiday on 7/03/92)

7/02/92 - Memo filed by Keith R. Truffer, Esq. on behalf of Rodgers Forge Comm Inc.
7/6/92 - J. Ingolia, Petitioner

County Board of Appeals of Baltimore County
-COUNTY OFFICE BUILDING, ROOM 315-
111 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180
400 Washington Avenue
January 14, 1992

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 92-5-A

JOSEPH N. INGOLIA, JR., ET UX
N/S Hopkins Road, 240' E Pinehurst Road (218 Hopkins Road)
9th Election District;
4th Councilmanic District

VAR-rear yard setback 11' in lieu of 37.6'/open deck

10/9/91 - D.Z.C.'s Order DENYING Petition.

ASSIGNED FOR: TUESDAY, APRIL 7, 1992 AT 1:00 p.m.

cc: Mr. and Mrs. Joseph Ingolia - Petitioners/Appellants
Keith Truffer, Esquire
Mr. Donald Grauel
Ms. Mini Wood
People's Counsel for Baltimore County
P. David Fields
Pat Keller
Public Services
Lawrence E. Schmidt
Timothy M. Kotroco
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, Director of Zoning Administration

LindaLee M. Kuszmaul
Legal Secretary

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

Hearing Room -
Room 48, Old Courthouse
400 Washington Avenue March 24, 1992

NOTICE OF POSTPONEMENT AND ASSIGNMENT
NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 92-5-A

JOSEPH N. INGOLIA, JR., ET UX
N/S Hopkins Road, 240' E Pinehurst Road (218 Hopkins Road)
9th Election District;
4th Councilmanic District

VAR-rear yard setback 11' in lieu of 37.6'/open deck

10/9/91 - D.Z.C.'s Order DENYING Petition.

which was scheduled for hearing on April 7, 1992, has been POSTPONED at the request of Petitioner/Appellant who will be out of town during that week; and has been

REASSIGNED FOR: THURSDAY, JUNE 18, 1992 AT 1:00 P.M.

cc: Mr. and Mrs. Joseph Ingolia - Petitioners/Appellants
Keith Truffer, Esquire - Counsel for Rodgers Forge Comm. Inc.
Mr. Donald Grauel
Ms. Mini Wood
P. David Fields
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, Director of Zoning Administration

Kathleen C. Weidenhammer
Administrative Assistant

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

September 22, 1992

Mr. & Mrs. Joseph N. Ingolia, Jr.
218 Hopkins Road
Baltimore, MD 21212

RE: Case No. 92-5-A
Joseph N. Ingolia, Jr., et ux

Dear Mr. & Mrs. Ingolia:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Very truly yours,
Kathleen C. Weidenhammer
Administrative Assistant

encl.

cc: Keith Truffer, Esquire
Mr. Donald Grauel
Ms. Mini Wood
P. David Fields
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, Director of Zoning Administration

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

May 19, 1988

Richard T. Rombro, Esquire
341 N. Calvert Street
Baltimore, MD 21202

RE: Case No. 88-111-A
Steven Alpern, et al

Dear Mr. Rombro:

Enclosed is a copy of the final Opinion and Order issued this date by the County Board of Appeals regarding the subject case.

Sincerely,
Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Secretary

Enclosure

cc: Mr. & Mrs. Steven Alpern
Keith Truffer, Esquire
Ms. Patricia L. Zouck
Mr. Scott D. Goetsch
Fatio Enclosures, Inc.
P. David Fields
James G. Hoswell
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Docket Clerk
Arnold Jablon, County Attorney

IN THE MATTER OF :
THE APPLICATION OF :
STEVEN ALPERN, ET AL :
FOR A ZONING VARIANCE ON PROPERTY :
LOCATED ON THE NORTH SIDE OF :
REGESTER AVENUE, 151.6' EAST OF :
PINEHURST ROAD :
(210 REGESTER AVENUE) :
9th ELECTION DISTRICT :
4th COUNCILMANIC DISTRICT :

BEFORE :
COUNTY BOARD OF APPEALS :
OF :
BALTIMORE COUNTY :
CASE NO. 88-111-A :

OPINION

This case comes before the Board after a decision of the Zoning Commissioner of Baltimore County denying a side yard setback variance.

The testimony in this case and all of the pictorial and schematic exhibits indicate that the property in question is in the "old section" of Rodgers Forge and is improved by a red brick multi-story structure with a side porch that is covered and extending 8 feet from the foundation of the main structure and being 12 feet wide is unenclosed. This porch, testimony indicated, had been built when the existing dwelling was built prior to the requirements of any subdivision approval by the Planning Board or any other then existing approval authority of Baltimore County as far as the side yard setback is concerned.

The Board believes that the initial question that it must confront is whether this property owner needs a variance in the first place. The Baltimore County Zoning Regulations (B.C.Z.R.) Section 103.1 states as follows:

"These Regulations shall apply as of the date of their adoption but the provisions pertaining to use, height, area and density of population shall not apply to any development, subdivision or parcel of land, the preliminary plan for which was originally submitted to the (then) Baltimore County Planning Commission, (now Planning Board) and approved or tentatively approved (including any approval made subject to any condition or conditions) under the then existing official procedure in Baltimore County, prior to the adoption of these Regulations. The zoning regulations applicable to any such development, subdivision or parcel of land as aforesaid shall be the zoning regulations

ROYSTON, MUELLER, McLEAN & REID

ATTORNEYS AT LAW
SUITE 600
100 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4575
(410) 833-1800
TELECOPIER FAX (410) 833-7850

OF COUNSEL:
CARROLL W. ROYSTON
H. ANTHONY MUELLER
JOHN L. ASKEW
EUGENE W. CUNNINGHAM, JR.

ROYSTON, MUELLER, McLEAN & REID
100 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4575
(410) 833-1800
TELECOPIER FAX (410) 833-7850

May 22, 1990

Resident
218 Hopkins Road
Baltimore, Maryland 21212

Re: Violation of Rodgers Forge's Restrictive Covenants
Construction of Deck and Fence

Dear Sir/Madam:

I have been retained to represent the Rodgers Forge Community, Inc. for the purpose of enforcing the restrictive covenants applicable to your property. These restrictions were originally created in a deed within your chain of title and are common to Rodgers Forge properties such as yours. This letter represents formal notice that the recent construction of the deck and fence in the rear of your property is of a size unacceptable to the Rodgers Forge Community, Inc. and was performed without the community association's prior written approval. As such, the construction and maintenance of the deck and fence represents a violation of the restrictive covenants or equitable servitudes applicable to your property.

I have been authorized to file suit against you to abate this violation and I intend to do so within ten days from the date of this letter unless you contact me within that time to make other arrangements to resolve this problem.

Please give this matter your prompt attention.

Sincerely,

Keith R. Truffer

KRT/cjc
3404y

ROYSTON, MUELLER, McLEAN & REID

ATTORNEYS AT LAW
SUITE 600
100 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4575
(410) 833-1800
TELECOPIER FAX (410) 833-7850

OF COUNSEL:
CARROLL W. ROYSTON
H. ANTHONY MUELLER
JOHN L. ASKEW
EUGENE W. CUNNINGHAM, JR.

June 5, 1990

Mr. Joseph Ingolia
218 Hopkins Road
Baltimore, Maryland 21212

Dear Mr. Ingolia:

I follow up on our recent telephone conversation concerning your deck and fence. As you have requested, I enclose a copy of the Deed dated November 26, 1935 from James Keely, Inc. to The James Keely Realty Corp. which initially created the restrictions on your property. The specific restriction is number 6 and states, in essence, that no exterior alteration may be made to the property without the prior written approval of The James Keely Realty Corp. The James Keely Realty Corp., through the James Keely Company, assigned its right to enforce the covenants to the Rodgers Forge Community, Inc. in the late 1950's. These documents are in the chain of title through which you obtained your property and you are deemed by the law to be on constructive notice of the restrictions.

You will not doubt observe that the restrictions, by their terms, expired on December 31, 1960. While this is somewhat different than other portions of Rodgers Forge, the Community Association has always maintained, and will continue to maintain, that these properties are subject to the same restrictions as all properties in Rodgers Forge.

The uniformity of the Rodgers Forge development is well known and has provided the basis for the continued stability in property values that this community enjoys. This uniform scheme of development was created at the inception of this development and has been assiduously adhered to ever since. Moreover, the restrictive covenants contained in the Deeds and Declarations as

legal tender be made of said principal interest, costs, expenses and commissions.
It is further agreed that in case the mortgagor shall sell, transfer or dispose of the within described property without first obtaining the assent in writing of the Mortgagee, then the unpaid balance shall immediately become due and in default of payment this debt shall be a lien in favor of the Mortgagee.

as witness the hands and seals of said mortgagors

Test
J. Irvin McCourt
State of Maryland, City of Baltimore, to-wit:
Ernest H. Courney (SEAL)
Bertha H. Courney (SEAL)

I hereby certify that on this 26th day of November in the year nineteen hundred and thirty five, between the undersigned a body corporate of the State of Maryland and for the City of Baltimore, on the one hand, and James Keely, Inc. and Bertha H. Courney his wife the Mortgagee named in the foregoing mortgage, on the other hand, the foregoing mortgage to be their respective part at the time of this recording by J. Irvin McCourt the President of the said body corporate, and as such in the presence of me that the consideration of said mortgage is true and lawful and therein set forth and also made oath that it is the great and valid mortgage and not a sham or fraud.

Witness my hand and official seal
(Not a Seal)
J. Irvin McCourt
Notary Public

Recorded May 27, 1990 at 4:00 P.M. by J. C. Hilling, Urology Jr. Clerk

Witness
James Keely Inc.
Lent to
The James Keely Realty Corp.
The James Keely Realty Corp. is a body corporate duly incorporated and organized under the laws of the State of Maryland party of the first part and the James Keely Realty Corporation a body corporate duly incorporated and organized under the laws of the State of Maryland party of the second part.

Witnesseth that the said James Keely, Inc. in consideration of the rents hereinafter provided to be paid with demise and lease unto The James Keely Realty Corporation Inc. and its successors and assigns all those six lots of ground situated in Baltimore County and State of Maryland which are severally described as follows that is to say

EX-5 K-11

CASE NUMBER

92-5-A

PETITIONER'S EXHIBIT #8



CASE NUMBER

92-5-A

PETITIONER'S EXHIBIT #8



ZONING ENFORCEMENT SECTION

TELEPHONE: 887-3351

***** CORRECTION NOTICE FOR ALLEGED ZONING VIOLATION *****

CASE NUMBER C- 91-861 ELECTION DISTRICT: 9th

LOCATION: 218 Hopkins Rd.

Karen J. Joseph M. Ingolia, Jr.

PLEASE BE ADVISED THAT AN INSPECTION OF THE ABOVE REFERENCED LOCATION REVEALED:

☐ THERE WAS NO VIOLATION OBSERVED AND THE CASE WILL BE CLOSED.

☒ THERE IS AN APPARENT VIOLATION AND THE FOLLOWING CORRECTION IS REQUIRED:

The deck (open porch) constructed in the rear yard of the above referenced location must be at least 37 1/2' from the rear property line. One of the following actions must be taken:

1. Alter the deck so that it is located no closer than 37 1/2' from the rear lot line.

OR

2. File for a variance (public hearing) which, if successful, would allow the deck to remain unaltered.

Any questions, call 887-8090

FAILURE TO COMPLY BY 3-14-91, WILL RESULT IN THE ISSUANCE OF A CITATION WHEREIN YOU ARE SUBJECT TO A CIVIL PENALTY OF \$200.00 FOR EACH VIOLATION, AND EACH DAY SHALL BE CONSIDERED A SEPARATE VIOLATION (CIVIL PENALTY BILL #132-85).

☐ COMPLIANCE HAS BEEN ATTAINED AND THE CASE WILL BE CLOSED.

INSPECTOR: Frank D. Myler

DATE: 3-14-91

Petitioner's Exhibit #8

THE RODGERS FORGE COMMUNITY, INC.

RESOLVED: That the position of the Rodgers Forge Community, Inc. as adopted by the Zoning Committee on the zoning matter known as:

Case No. 92-5-A
Joseph N. Ingolia, Jr., et ux.

is that: (a) The interests of the individual members of the Community Association would be materially harmed by the granting of this Petition.

(b) Petitioner will not experience practical difficulty or unnecessary hardship from the denial of the Petition.

IT IS FURTHER RESOLVED: That Donald C. Grauel and Mimi Wood are authorized to speak on behalf of the Community Association on this zoning matter.

AS WITNESS OUR HANDS AND SEALS this 10th day of June, 1992.

ATTEST: THE RODGERS FORGE COMMUNITY, INC.

Secretary: E. A. W. L. By: Donald C. Grauel, President

Secretary: E. A. W. L. By: Donald C. Grauel, President

Secretary: E. A. W. L. By: Donald C. Grauel, President

Secretary: E. A. W. L. By: Donald C. Grauel, President

Secretary: E. A. W. L. By: Donald C. Grauel, President

Secretary: E. A. W. L. By: Donald C. Grauel, President

Secretary: E. A. W. L. By: Donald C. Grauel, President

Secretary: E. A. W. L. By: Donald C. Grauel, President

Secretary: E. A. W. L. By: Donald C. Grauel, President

Secretary: E. A. W. L. By: Donald C. Grauel, President

Secretary: E. A. W. L. By: Donald C. Grauel, President

Secretary: E. A. W. L. By: Donald C. Grauel, President

Secretary: E. A. W. L. By: Donald C. Grauel, President

Secretary: E. A. W. L. By: Donald C. Grauel, President

AFFIDAVIT

STATE OF MARYLAND, COUNTY OF BALTIMORE, to-wit:

1. I HEREBY SWEAR upon penalty of perjury that I am currently a duly appointed member of the Zoning Committee of the Rodgers Forge Community, Inc. (As to Donald C. Grauel, only)

2. The Rodgers Forge Community, Inc. has approximately 1,800 homes within the Community.

3. The Rodgers Forge Community is bound geographically by: York Road to the East; Bellona Avenue to the West; Stevenson Lane generally to the North; and Overbrook Road generally to the South.

4. The Rodgers Forge Community, Inc. has retained an attorney, Keith R. Truffer, to represent its interests in this matter.

ATTEST: THE RODGERS FORGE COMMUNITY, INC.

Secretary: E. A. W. L. By: Mimi Wood

Secretary: E. A. W. L. By: Mimi Wood

Secretary: E. A. W. L. By: Mimi Wood

Secretary: E. A. W. L. By: Mimi Wood

Secretary: E. A. W. L. By: Mimi Wood

Secretary: E. A. W. L. By: Mimi Wood

Secretary: E. A. W. L. By: Mimi Wood

Secretary: E. A. W. L. By: Mimi Wood

Secretary: E. A. W. L. By: Mimi Wood

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Secretary: E. A. W. L. By: Mimi Wood

Secretary: E. A. W. L. By: Mimi Wood

Secretary: E. A. W. L. By: Mimi Wood

Secretary: E. A. W. L. By: Mimi Wood

Secretary: E. A. W. L. By: Mimi Wood

Secretary: E. A. W. L. By: Mimi Wood

Subscribed and sworn to before me, in my presence, this 18th day of June, 1992, a Notary Public in and for the Harford County State of Maryland.

Helena Tesnau
Notary Public

My commission expires March 1, 1995.

23

The Rodgers Forge Community, Inc.

AN ORGANIZATION OF THE RESIDENTS OF RODGERS FORGE
BALTIMORE, MD. 21212

RESOLVED: That at the Board of Governors meeting of the Rodgers Forge Community, Inc. held on June 10, 1992, it was decided by the Association that responsibility for review and action on all zoning matters be placed in the zoning committee consisting of the members listed on the attachment to this Resolution.

AS WITNESS OUR HANDS AND SEALS this 10th day of June, 1992.

ATTEST: THE RODGERS FORGE COMMUNITY, INC.
BY: Donald C. Grabel, President
Secretary

COVENANTS-ZONING COMMITTEE 1991-92

Robert Carroll (Chairman)	123 Brandon RD
Robin Bruck	135 Glen Argyle RD
Don Grauel	117 Hopkins RD
Jim Haynes	210 Stanmore RD
Mike May	125 Stevenson LN
Frank Palumbo	318 Overbrook RD
Ed Swoboda	420 Dunkird RD

Subscribed and sworn to before me, in my presence, this 18th day of June, 1992, a Notary Public in and for the Harford County, State of Maryland.

Helena Tesnanu
Notary Public

My commission expires March 1, 1995.

PETITIONERS EXHIBIT #10

PETITIONERS EXHIBIT #10

Rodgers Forge Newsletter

Official Publication of
The Rodgers Forge Community, Inc.

Vol. 12, No. 7

Baltimore, Maryland 21212

July, 1990

PICNIC A SIZZLER!

PRESIDENT'S MESSAGE

By all reports and from all indicators, the June 9, 1990 Rodgers Forge Picnic was a smashing success. I hope that each of you had the opportunity to enjoy this fantastic community event. I thank Mimi Wood and her hard-working committee members for doing a great job in making the 1990 Picnic such a wonderful time.

Picnic volunteers are not Rodgers Forge's only volunteers. It takes lots of people pitching in to make our neighborhood great. For example, many of you have by now noted the Rodgers Forge sign at the triangle of Stevenson Lane, Stanmore Road and Dunbarton Road. It is once again lit and landscaped. Ginny Allen of Stanmore Road has for years quietly assumed the job of planting flowers near the sign and generally maintaining the triangle. This past winter, she asked the Board to again light the sign. With the volunteer help of electricians from L.H. Canavan & Sons, the sign is again lit after years of darkness. I thank Ginny Allen for her commitment to making Rodgers Forge beautiful.

Volunteerism does not stop there. As I often advise from this column, one essential element to maintaining Rodgers Forge's unique neighborhood quality is vigorous enforcement of our restrictive covenants. Any exterior alteration—change in paint color, addition of shutters, plans for construction of a deck or a shed, etc.—requires your Community Association's prior approval. Despite apparent lax enforcement of the covenants in prior years, turning this past five years or more, your Board has aggressively enforced the covenants.

Each month, many persons file their forms requesting approval of plans for exterior alterations (a copy of the form is found on page 4 of the Rodgers Forge Directory), and each month the Board reviews the requests and promptly acts upon them. Unfortunately, sometimes unacceptable changes are made without Community Association consent and on numerous occasions in the past year or so, the Association has been required to hire legal counsel to ensure enforcement of the covenants.

Each member of the community can do his or her part in ensuring covenant enforcement. Whenever you observe construction or change in your neighborhood, call a member of the Board—all of our names are in the front of the Directory. Because of the size of Rodgers Forge, the Board needs your help to enforce the covenants and preserve the wonderful character of OUR neighborhood. Be a covenant volunteer!

The Annual Open Meeting of the Rodgers Forge Community Association will be held on Wednesday, September 12, 1990 at 7:30 p.m. County Executive Dennis Rasmussen will be our guest speaker. Please mark your calendars and plan to attend.

Ed Gillis
Drive Safety,
Ed Gillis



WHAT A DAY FOR A PICNIC! The second Annual Rodgers Forge Picnic (5th) kicked off June 9th in superb style...we, as a community, are exceptionally fortunate to have Cindy Bregel & David Cooley as well as the Baltimore County Police Dept. and numerous neighbors, who volunteer their time to provide us with such a special event!

With the delectable aroma of pit beef wafting across the glen, it was difficult to resist the many culinary delights offered at the picnic. Along with the mouth-watering beef, neighbors munched on hot dogs, scones & a plethora of baked goods—and washed everything down with a cool, refreshing soda, etc. Thanks to Jim Cook and his food committee: Ed Gillis, Rich Johnson, Don Grauel, Mary Jeanne Frank and Sam Potter—with a very special thank you to the Phantom Phone Caller, Janice Palumbo, to whom we all owe a few pounds! (Janice was the key ingredient to the Bake Table's vast array of goodies!)

The lines moved quickly at the ticket table with Donna Wooditch at the helm. A tip of the RF vest to Don Grauel, who concocted the fantastic idea of a dues drawing.

The Happy strains of guitars, fiddles and harmonicas added much to the day's festivities! Many neighbors took advantage of the warm, pleasant sunshine and spread a blanket, laid back and enjoyed the music against the colorful backdrop of facepainting clowns! Thanks to Steve Bennett for organizing the tunes, and to Tatter Garding for co-ordinating the clowning.

Enticed by the fabulous prizes, (an overnight stay at the Shoveller Inner Harbor Hotel...six box seats to the O's!), many adult couples enjoyed the competition and camaraderie of the Adult Games! Bucks Wilkinson...great job!

Fingers sore and sticky from covering 20+ some shoeboxes the night before, Michele Behlan & Dawn Gough still managed sparkling smiles behind the Chinese Auction table...as did the many winners of the auction, which featured great prizes, such as Brunch for two at the Shenon Towns...or a pedicure from About Faces!

It's a shame more people didn't enter the question Contest...it's fun and easy to Win-A-Prize! The winners this year were:

- 1) Most Kids in a House—Mrs. Catherine Connelly with SEVEN.
- 2) Most Unusual Pet—Lisa Hurka Covington with a pond with frogs.
- 3) Born on February 29—Mr. Douglass.
- 4) Most Letters in a Name—Donna Marie Jacqueline Wooditch.
- 5) Youngest Resident—Elizabeth Glenn Wood, born 7/1/88. (Come on! This is why we need more entrants!)
- 6) Newest Residents—Bey and Randi on Lanark Court! Welcome!
- 7) Oldest Resident—Mabel Betts.
- 8) Person Born Farthest from RF—Greg Albertson in Yokosuka, Japan.
- 9) Person With Most Pets—Herbie Muth.
- 10) Person having lived in most number of Forge Houses—Jack Kidd (3).

Clippity-cloppity around the glen pranced three pretty ponies—a real treat for all the kids. Pete Russell did a great job of keeping the line moving so that everyone got a ride!

Last but certainly not least, many thanks to Al Byrne and his sweaty but lovable set-up and clean-up crew—Tim Gistel, Frank Palumbo, Ed Swoboda, Rich Zell and Jim Cook, and our honorary groundskeeper, Jack Graham. Also, thanks to Roy Schout Chris Sanders for helping with the clean-up as part of his community service project!

Thanks to all the neighbors and friends, who volunteered their time in helping at the picnic, baking a sweet—or whatever! Anyone who participated is sure to agree that one gets a real sense of community spirit—in addition to having a great time—by getting involved! It doesn't take much time or effort—especially if you

see page 2

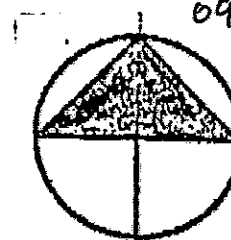
EX 10

Plat to accompany Petition for Zoning ☒ Variance ☐ Special Hearing

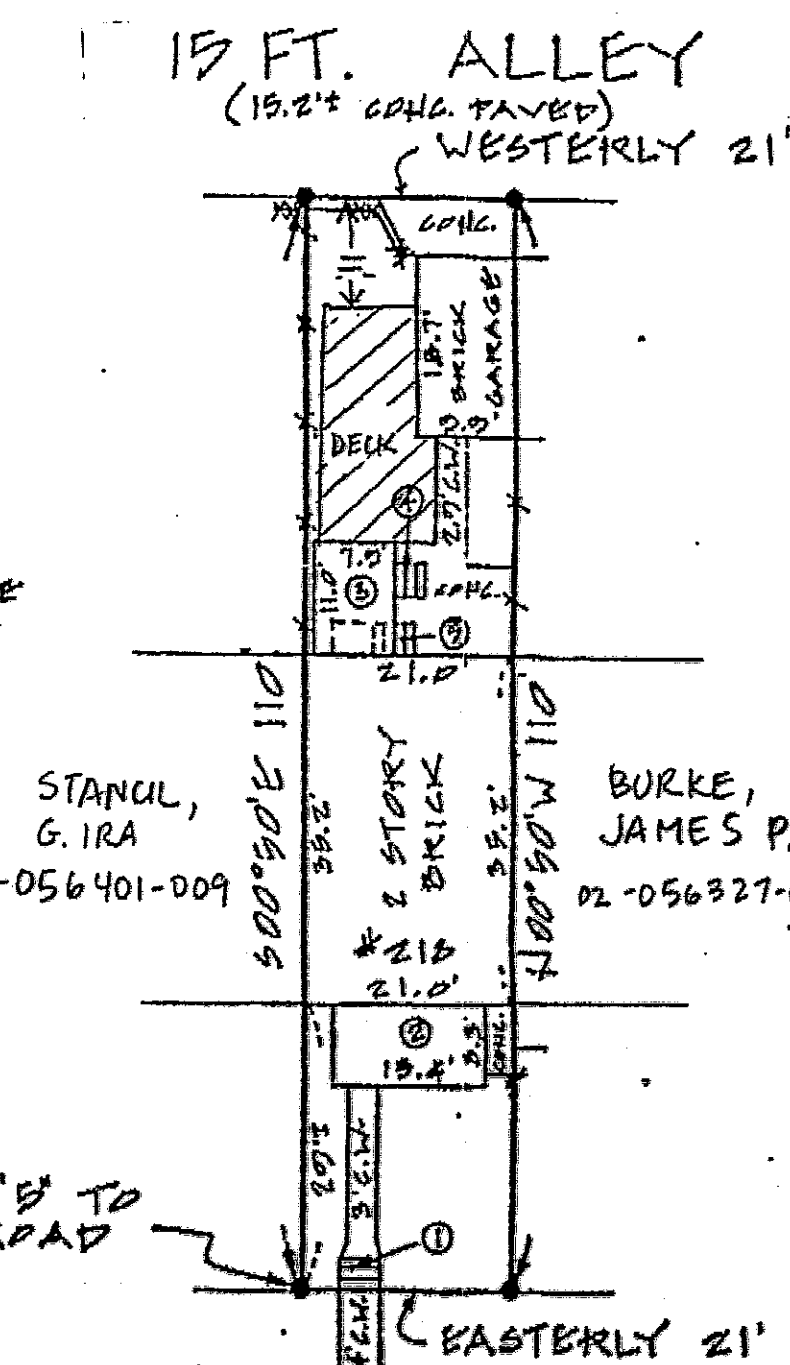
PROPERTY ADDRESS: 218 HOPKINS RD

see pages 5 & 6 of the CHECKLIST for additional required information

Subdivision name: RODGERS FORGE

plat book# —, folio# —, lot# —, section# —
Described by Deed Reference (only) 8126/366 (300)OWNER: JOSEPH & KAREN INGOLIA
09-02000-340

- 1) CONC. STEPS
- 2) CONV. TILE PORCH
- 3) CONV. WOOD DECK
- 4) 3.2'x 3.4' WOOD STEPS
- 5) 3.2'x 3.0' CELLAR STEPS
- 6) 3.2' HIGH, CHAIN LINK FENCE
- 7) 3.2' HIGH, CHAIN LINK FENCE
- 8) 3.2' HIGH, WOOD FENCE



OWNERS WILL TAKE FULL RESPONSIBILITY
AS TO THE INFORMATION PROVIDED ON
SAID PLAT PREPARED BY BALTO. CO.
OWNER: JOSEPH & KAREN INGOLIA
DATE: 7/1/91

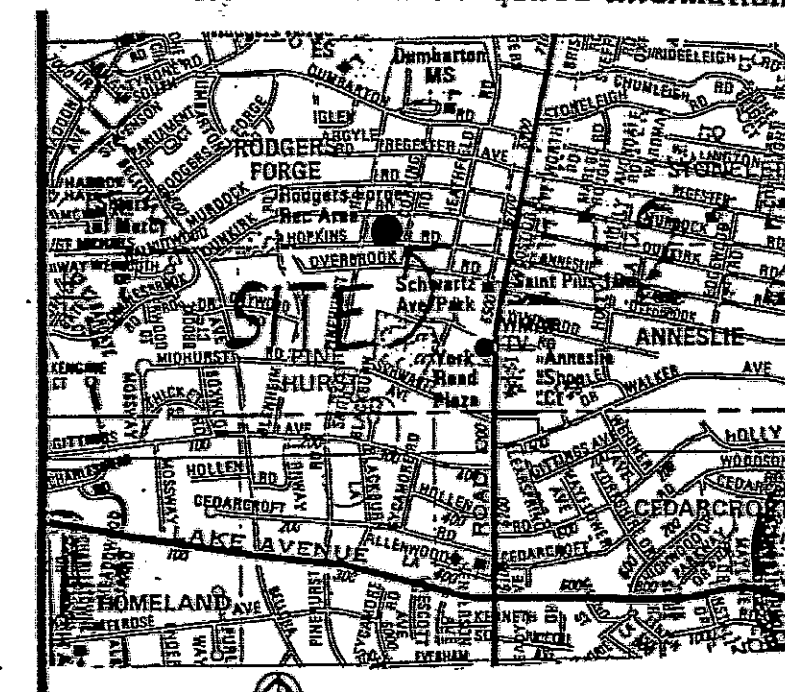
92-5-A

PETITIONER'S EXHIBIT 4

North
date: 7-1-91
prepared by: LG

—BEG. 244' TO
PINEHURST ROAD
HOPKINS ROAD
EASTERLY 21'

Scale of Drawing: 1" = 20'



Vicinity Map
Scale: 1" = 1000'

LOCATION INFORMATION

Councilmanic District: 4

Election District: 9

1"=200' scale map#: NE 8A

Zoning: DR 10.5

Lot size: .0524 acre 2310 sq. ft.

SEWER: ☒ public ☐ private
WATER: ☒ public ☐ private

Chesapeake Bay Critical Area: ☐ yes ☒ no

Prior Zoning Hearings: NONE

Zoning Office USE ONLY!

reviewed by: ITEM #: CASE#:

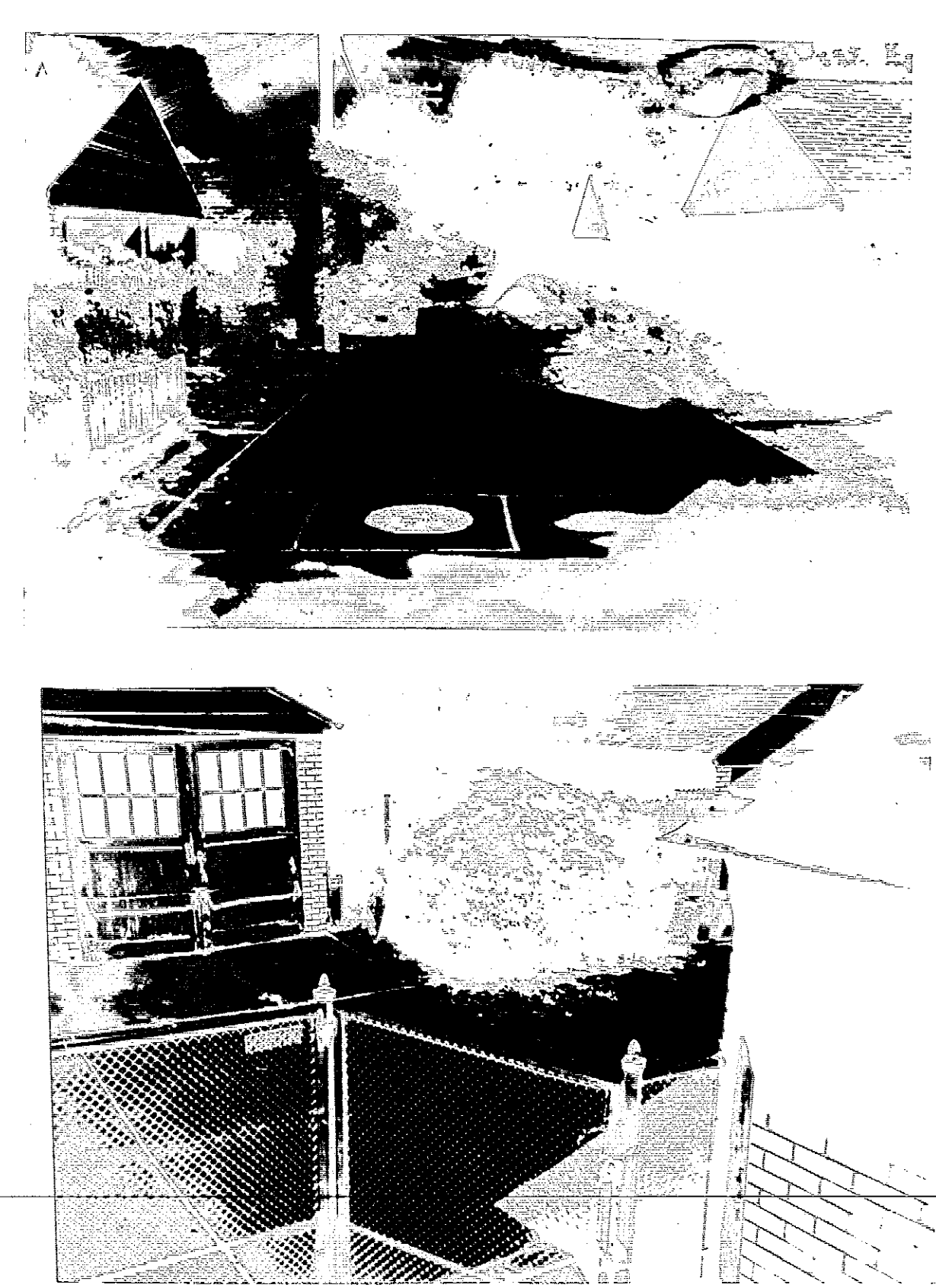
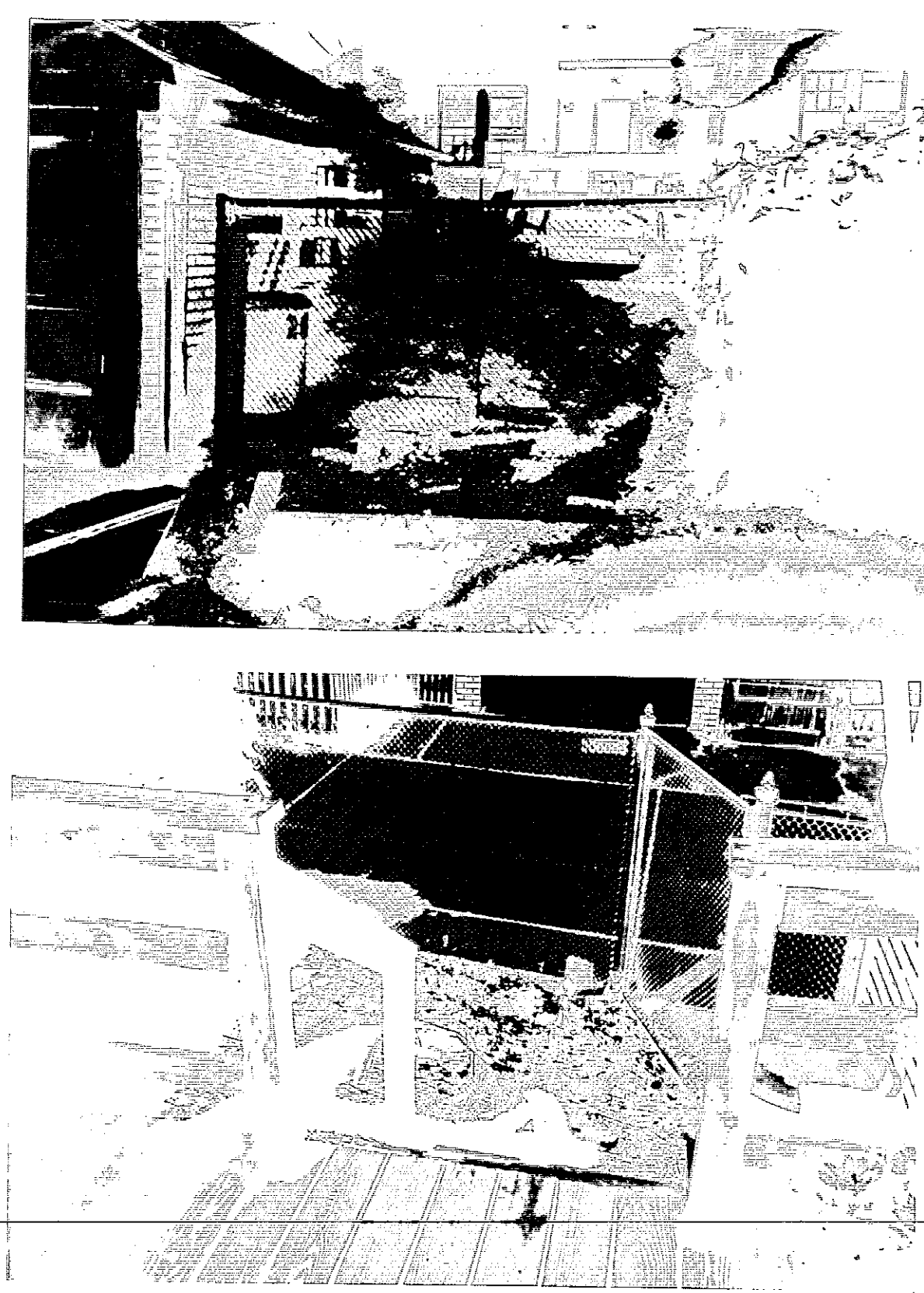
LG 01 92-1

Continued on Ex 11

Petitioner's
Exhibits
3A & 3B
Case 92-5-A



PETITIONER'S
EXHIBITS
6A-6J
8A-8J
CASE 92-5-A



Petitioner's
Exhibit
9
Case 92-5-A

Petitioner's
Exhibits
6A-6L
Case 92-5-A



COVENANTS

PHONE (H)
582-7551
377-4776
377-9217
823-0189
583-7643
377-6969
377-7091
377-4541
825-0894
377-4327
377-8983
377-4082
296-5737
823-7085
828-5892
583-9545
377-8448
377-9189
825-4506
377-7803
377-7414
377-2533
583-2288
377-6869

COVENANTS and BUILDING RESTRICTIONS

"NO RESIDENTIAL STRUCTURE SHALL BE ERRECTED, PLACED OR ALTERED ON ANY BUILDING PLOT IN THIS SUBDIVISION UNTIL THE EXTERNAL DESIGN AND LOCATION THEREOF HAVE BEEN APPROVED IN WRITING BY THE JAMES KEELY REALTY CORPORATION, ITS SUCCESSORS AND ASSIGNS."

"IF THE PARTIES HERETO OR ANY OF THE, THEIR SUCCESSORS, HEIRS OR ASSIGNS AS THE CASE MAY BE SHALL VIOLATE, OR ATTEMPT TO VIOLATE, ANY OF THE COVENANTS HEREIN IT SHALL BE LAWFUL FOR ANY OTHER PERSON OR PERSONS OWNING ANY REAL PROPERTY SITUATED IN THIS DEVELOPMENT OR SUBDIVISION TO PROSECUTE AT LAW OR IN EQUITY AGAINST THE PERSON OR PERSONS VIOLATING AT ATTEMPTING TO VIOLATE ANY SUCH COVENANT AND EITHER TO PREVENT HIM OR THEM FROM SO DOING OR TO RECOVER DAMAGES OR OTHER DUES FOR SUCH VIOLATION."

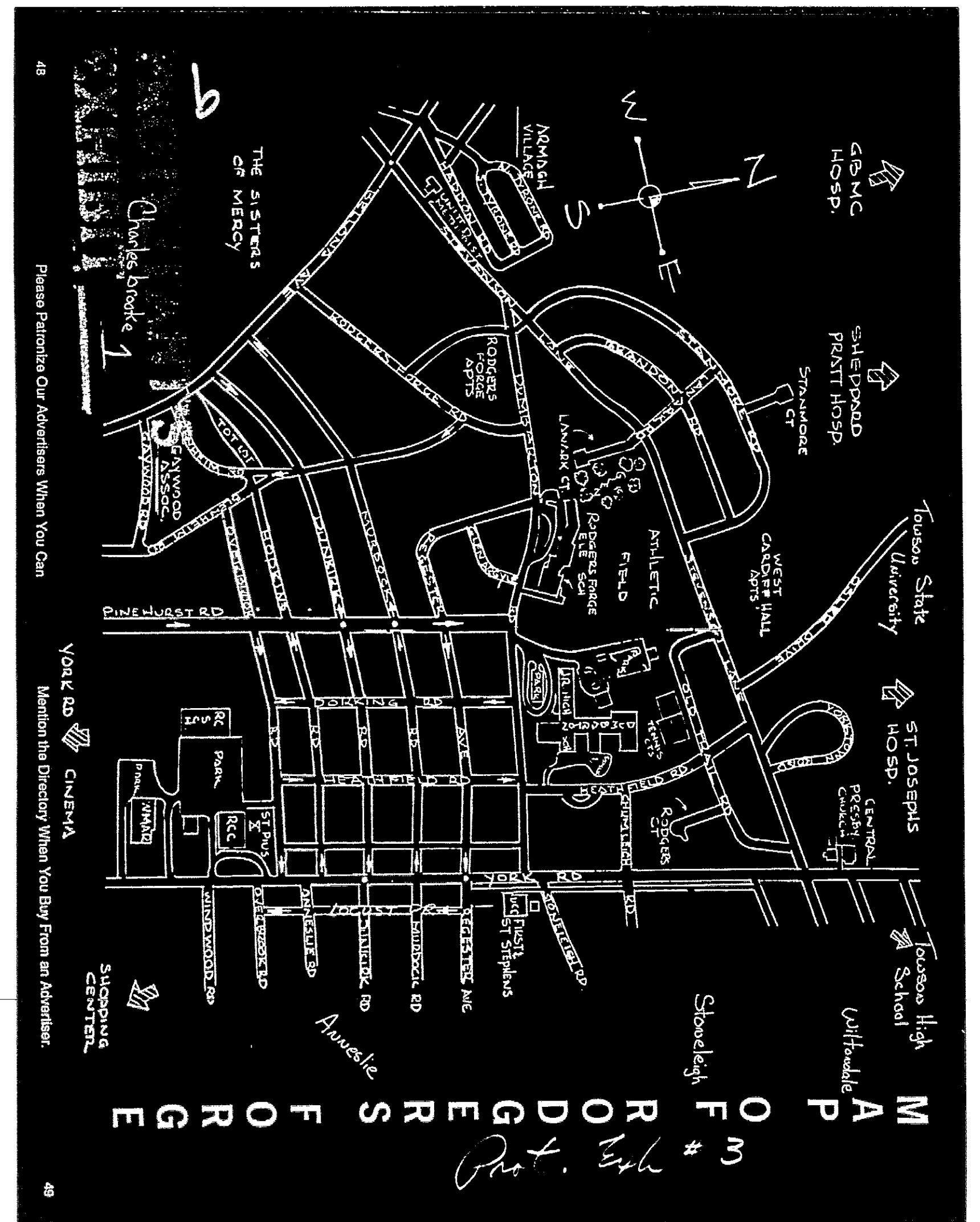
These two statements are contained in restrictive covenants which are referred to in every deed to property in Rodgers Forge. There may be minor variations in the language, and there are other covenants which restrict the use of property in different areas of the community. But, these two covenants are the most important and relevant.

The Community Association became the successors to the Keely Company when each phase of the development was finished. Each year the Board of Governors appoints a committee which is authorized to approve or disapprove any and all alterations to the exterior of homes in Rodgers Forge. This committee follows established procedures for accepting and reviewing requests for alterations to the homes.

It is the responsibility of the homeowner to request approval from the committee for any changes to the exterior of the property. This includes everything from ground to rooftop, front and back. Paint colors, porches, decks, sheds, fences, replacement windows, roofs, etc. are all subject to review by the committee. Some changes are specifically prohibited by individual covenants, and, therefore, will not be approved. Other changes are allowed with the committee's approval.

If you are contemplating any changes to the exterior of your house, you must receive the approval of the committee prior to making the change. To do so, you must submit your request in writing in duplicate. Exact specifications are needed so that proper evaluation of the request can be made. The committee has prepared a form to Mention the Directory When You Buy From an Advertiser.

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bors.
S KEEP
ers When You Can





SCALE
1" = 200' ±
DATE
OF
PHOTOGRAPH
JANUARY
1986

LOCATION
STONELEIGH
ANNESLIE
ROGERS FORGE

SHEET

N E.

8-A

8-A
92-5-A

PREPARED BY AIR PHOTOGRAPHICS, INC
MARTINSBURG, W. V. 25401

At the outset, it is important to clarify that this is not a restrictive covenant enforcement case. The Protestants did not introduce any restrictive covenants and will not, of course, argue that those covenants or other equitable liens be enforced in this appeal. The issue of restrictive covenants was addressed in Protestants' testimony only as necessary to establish the aiding architectural uniformity of the community, the significant and long standing efforts taken by the community to maintain that architectural uniformity, and the damage that will result to the community if the requested variance is granted.

II. STANDARDS TO BE APPLIED.

Petitioner bears the burden of proof to show that all of the conditions justifying the grant of a variance are met, Burns v. Mayor & City Council of Baltimore City, 251 Md. 554, 559, 248 A.2d 103 (1968).

Section 307.1 of the Baltimore County Zoning Regulations defines the conditions under which the Zoning Commissioner or the County Board of Appeals may grant a variance from height and area regulations. The current regulations, which took effect on March 2, 1992, set out four (4) conditions that must be met in order to justify the grant of a variance. Those factors and the application of those factors to this case are as follows:

1) Special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request.

The Petitioner presented no evidence which suggested that his property is subject to special circumstances or conditions not common to other properties in the neighborhood. Indeed, the Protestants' witnesses testified that all of the properties in the community enjoy a uniformity of size and design. The Petitioner did testify that he had some difficulty in keeping the rear yard covered with grass. It is submitted that this feature hardly rises to the level of a "special circumstance or condition". Otherwise, every homeowner with a bad lawn could justify covering it with a deck. Moreover, the Petitioner did not show that this condition was distinct from other properties in the neighborhood.

2) Strict compliance with the zoning regulations would result in a practical difficulty or unreasonable hardship.

The criteria for practical difficulty has been set out in the case of Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App. 28, 39, 332 A.2d 992 (1974). Those criteria are:

A) Whether strict compliance with the zoning restrictions would unreasonably prevent the use of the property for a permitted purpose or render conformity unnecessarily burdensome. The Petitioner's own testimony demonstrated that, absent the deck, he has not been prevented in the use of his property. From February of 1989, when the house was purchased, through April of 1990, when the deck was completed, Petitioner's family was fully able to use the property for all residential

purposes. Moreover, the slight slope of the property and bare spots in the grass were the only items the Petitioner identified in discussing his use of the property. Nothing in the Petitioner's testimony supported the suggestion that these conditions "unreasonably prevented" his use of the property.

B) Whether a grant of the variance would do substantial justice to the Applicant and other property owners, or whether a lesser relaxation than that applied for would provide substantial relief. A grant of this variance impacts upon the architectural uniformity of the community and the property values which that uniformity supports. Conversely, a lesser relaxation of the restriction to a deck of twelve feet (12') would be consistent with the community's standards, do no violence to the community's architectural uniformity, and would still permit the Petitioner to extend the deck into fully one-half (1/2) of his rear yard (11 foot porch, plus 12 foot deck, equals 23 feet; total rear yard 46 feet).

C) Whether relief can be granted in such a fashion that the spirit of the restriction will be observed and public safety and welfare secured. The purpose and intent of setback regulations are to promote the continued existence of open space around dwellings and other structures. The Protestant's testimony described this community as one containing narrow lots, narrow streets and alleys, with little existing available open space. The requested variance, if granted, would further reduce what little open space exists in the community. It would contribute to visual congestion and represent an obstruction to sight lines between properties.

3. The variance must be in strict harmony with the spirit and intent of the zoning restrictions. As mentioned above, the spirit and intent of setback requirements are to promote open space around and between structures.

The requested variance, if granted, does violence to the spirit and intent of those restrictions by permitting the construction a deck of this size on an already overburdened rear yard within a community that has little open space to begin with. See also footnote number 1.

4. The variance will be permitted only in such a manner as to grant relief without injury to public health, safety and general welfare.

The requested variance, if granted, creates injury to public health, safety and general welfare. 2/ The community will be injured by a degradation of the architectural uniformity in the community and by the resulting economic impact on property values.

A. Economic Impact. The Protestants produced the expert testimony of Ms. Mimi Wood, who qualified as an expert in real estate sales. Ms. Wood's experience includes the sale of residential real estate in Rodgers Forge. Ms. Wood is also familiar with the community, having lived there for seven years

2/ One additional change in the new variance regulations is to remove the term "substantial injury" from the existing law. This change evidences an intent by the County Council to reduce the degree of injury to the public health, safety and general welfare which may be visited upon the community by the grant of a variance.

ROYSTON, MUELLER,
MCLEAN & REID
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102 W. PENN. AVE.
TOWSON, MARYLAND
21204-4578
410-818-1800

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and having served as a member of the Board of Directors for five years.

Ms. Wood described the architectural uniformity in the neighborhood and pointed to the strong enforcement efforts of the community association to maintain that uniformity. It was Ms. Wood's opinion that this uniformity contributed to higher property values in the community.

Ms. Wood described the Petitioner's deck as being too large. Indeed, she stated that there was "nothing like it" in the community. The deck is not in keeping with the architectural uniformity of the neighborhood and interferes with sight lines between properties. The deck represents a departure from other existing properties and, in the eyes of a prospective buyer, translates into lower property values in the neighborhood. It was Ms. Wood's opinion that, if granted, the requested variance would begin the breakdown of this uniformity which would have a resulting detrimental effect on the community's property values.

B) Architectural Impact. The Protestants' testimony and reported appellate decisions^{3/} document a longstanding effort by the Rodgers Forge Community to maintain the architectural uniformity created by the original developer. Adherence to these architectural standards is monitored and maintained by the community association's Covenants/Zoning Committee which, by way of directories, newsletters, and a block

captain system, attempts to educate community members on the existence of the standards and considers requests for alterations against those standards. As is witnessed by this appeal, the community vigorously opposes, at no small expense of time and money, deviations from the architectural scheme so as to preserve the uniformity in the community.

A community's architectural uniformity has a value that must be considered in evaluating a variance request. In Dahl v. County Board of Appeals of Baltimore County, 258 Md. 157 (1970), it was determined that a grant of the requested variance would affect what the Court there described as the "aesthetic ambience" of the neighborhood. As such, the variance would be in disharmony with the spirit and intent of the Zoning Regulations.

The Baltimore County Board of Appeals has previously considered this same issue in this very community. In case 88-111-A, The Application of Steven Alpern, 210 Register Avenue, which involved the requested enclosure of a patio, the Board of Appeals denied that request on the basis that the grant would affect the "aesthetic ambience of 1,800 homes in the Rogers Forge Community Association." A copy of this opinion has been provided the Board.

IV. CONCLUSION

The Petitioner has failed to show: (1) that special circumstances apply to his property which justify a variance; (2) that he is unreasonably prevented in the use of his property without a variance; (3) that a lesser relaxation of the setback

requirements would not do him substantial justice; and (4) that a grant of the variance is in strict harmony with the spirit and intent of the setback requirements.

A grant of the requested relief will create injury to the general welfare of the community. The continued existence of this deck directly impacts on the architectural uniformity in the community with a resulting detriment to the "aesthetic ambience" and property values of the community. Moreover, a grant of the requested relief would begin the downward slide that would eventually lead to the elimination of the architectural standards which have protected this community since the 1930's. For these reasons, the Protestants urge the Board of Appeals to deny this Request for Variance.

Respectfully submitted,

Keith R. Truffer
Keith R. Truffer
Attorney for Protestants

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3/ See, for example, Kirkley v. Seipelt, 212 Md. 127 (1957)

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PROTESTANT'S EXHIBIT A

Structures in Ingolia Rear Yard: Square Footage*

A. TOTAL REAR YARD (20' 7" X 46")	946.68 s.f. (40% = 378.67 s.f.)
B. STRUCTURES - REAR YARD	
PORCH 11' X 7' 11"	87.12 s.f.
GARAGE 13' 10" X 9' 9"	183.63 s.f.
DECK sec. 1: 10' 10" X 12' (129.92 s.f.)	
AND	
sec. 2: 12' 7" X 12' (150.96 s.f.)	280.92 s.f.
C. TOTAL DECK, GARAGE AND PORCH	551.67 s.f. - 58% of total rear yard
D. TOTAL DECK ONLY	280.92 s.f. - 29.7% of total rear yard

* Dimensions taken from Petitioner's testimony and Petitioner's Exhibit A

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218 Hopkins Road
Baltimore, Maryland 21213
July 6, 1992

Ms. Kathleen C. Weidenhammer
Administrative Assistant
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

RE: Joseph N. Innoia, Jr., et ux.

CASE No. 92-5-A

Dear Ms. Weidenhammer:

Enclosed is Petitioners' Brief for above reference case.

Thank you for your help with this matter.

Very truly yours,

Joseph N. Innoia, Jr.
Petitioner

Enclosure: Petitioners' Brief
Exhibit

cc: Mr. Keith R. Truffer
Rogston, Mueller, McLean & Reid

IN RE: PETITION FOR ZONING VARIANCE
N/S Hopkins Road, 240' E of
Pinehurst Road
(218 Hopkins Road)
9th Election District
4th Councilmanic District

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 92-5-A

Joseph N. Innoia, Jr., et ux
Petitioners

PETITIONERS' BRIEF

July 2, 1992

ARGUMENT

1. THE CORRECTION NOTICE FOR ALLEGED VIOLATION ISSUED TO THE PETITIONERS ON 2-14-91 SHOULD BE WITHDRAWN AND THE HEARING DISCONTINUED BECAUSE THERE IS NO VIOLATION OF SECTION 301 OF THE BALTIMORE COUNTY ZONING REGULATIONS.

By Correction Notice for Alleged Zoning Violation

dated, 2-14-91 the petitioner in this case was

notified as follows:

THERE IS AN APPARENT VIOLATION AND THE FOLLOWING CORRECTION IS REQUIRED

The deck (open porch) constructed in the rear yard of the above referenced location must be at least 3'-1/2' from the rear property line. One of the following actions must be taken:

1. Alter the deck so that it is located no closer than 3'-1/2' from the rear lot line.

OR

2. File for a variance (public hearings) which if successful would allow the deck to remain unaltered.

As a result of the above notice which was issued regarding the property at 218 Hopkins Road, and in reliance on its accuracy, the petitioners who reside at that address, made application for a variance. It now is clear that there is no violation of Section 301 of the Baltimore County Zoning Regulations and that no variance is necessary.

The Baltimore County Zoning Regulations provide in pertinent part that:

301 Projection Into Yards (BCZR, 1955)

301.1 If attached to the main building, a carport, or a one story open porch, with or without a roof, may extend into any required yard not more than 25% of the minimum required depth of a front or rear yard or of the minimum required width of a side yard.... (Emphasis supplied)

The petitioners submit that the open porch referred to in the Correction Notice and at issue in this proceeding is not attached to the main building. Both the petitioners and the builder have so testified, and such testimony is uncontroverted in the record. Consequently, the improvement in question does not come within the purview of Section 301 of the Zoning Regulations which by its terms specifically requires that the addition be attached to the main building. The Correction Notice should be withdrawn or considered satisfied. Further, this proceeding should be discontinued and the matter closed.

It is noted that should the Board decide the issue in favor of the petitioners it need not and should not consider the alternative issue set forth below. Further, the Board has jurisdiction of the subject matter and a decision granting the relief requested is proper even though the case comes before the Board on the petitioners' request for a variance. It must be patently clear that but for the Zoning Commission's Correction Notice (Petitioner's Ex. 9), which sets forth two options, none of which is required by Section 301.1 of the Zoning Regulations, this case would never have come before the Board. Indeed, except for the complaint of the Improvement Association (dated 8-1-90 and in the records of the Zoning Commission) there would have been no notice from Zoning. As will be later set forth, the Association's actions are not only misguided and improper, but it seeks to use the Board to carry out its unwarranted goals and filial prerogatives regarding covenants that do not now exist. It is respectfully submitted that neither the Zoning Board nor the Commission should allow itself to be so used or misled.

2. IN THE ALTERNATIVE SHOULD SECTION 301 OF THE BALTIMORE COUNTY ZONING REGULATIONS BE DENIED TO APPLY, THEN THE VARIANCE REQUESTED HERE SHOULD BE GRANTED. STRICT COMPLIANCE WITH THE SET-BACK REQUIREMENTS OF SECTION 301 ARE BOTH UNWARRANTED AND UNNECESSARY AND WOULD RESULT IN PRACTICAL DIFFICULTY TO THE PETITIONERS WITHIN THE AMBIT OF SECTION 301 OF THE ZONING REGULATIONS.

It is well to note that the phrase "or practical difficulty" was added to the statute in 1991 and probably was occasioned by 75 Opinion, Attorney General -- October 5, 1990. In that opinion the Attorney General found that the Washington Grove Town Council could not use a test of "practical difficulty" in granting a variance because Section 66B was the enabling statute empowering the subdivisions to adopt zoning laws and it only used an, "unnecessary hardship," test. The Attorney General's opinion then proceeds to discuss the criterion for determining, "unnecessary hardship" and "practical difficulty". It concludes that "practical difficulty," imposes a lesser standard than does, "unnecessary hardship," citing Loyola Loan Assoc. v. Buschman 227 Md 241, 248-249, 176 A2d 355 (1961).

The Baltimore County Zoning Regulations provide in pertinent part that:

307 Variances

307.1 The Zoning Commission of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations...only in cases where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship.... Furthermore any such variance shall be granted only if in strict harmony with the spirit of intent of (the) regulations and only in such manner as to grant relief without substantial injury to public health, safety and general welfare.

The petitioner testified in this proceeding that he bought his house in February of 1989 and that the house needed work. He redid the windows, the roof and the kitchen and recognized something had to be done in the back yard. He stated there was no grass in the back yard, that there were large drainage runs and that a neighbor's dog dug under the fence, frightened the petitioner's two young children and bit him. Petitioner testified that he needed the use of the back yard and considered and attempted to grow grass or sod but nothing

would grow. Then he looked around the community to see what his neighbors had done. He noted that the yards with free standing decks looked tidy and attractive and decided to build one. He checked with his neighbors to make certain they were aware of and approved of the improvement. He stated that he then contracted to build the free standing deck with I. L. K. Contractors, a licensed state and Baltimore County builder. The deck was built and the petitioner borrowed \$3700.00 to pay for it. The testimony of Ira Katz, who does business as I. L. K. Contractors corroborates the petitioner's testimony concerning the building of the deck. It also indicates that no application for a variance was made by him because Mr. Katz called the county and was informed none would be needed. The petitioner further testified that had he believed the improvement was being built without a needed variance he would not have had it built. In addition, he indicated that at the time the deck was being built he was unaware of the existence of any Community Association and that none had ever contacted him. Indeed, no person or Association ever complained about the need for a variance. Instead, by letter dated May 22, 1990, from the attorney for the Rodgers Forge Community Association, addressed to, "Resident," the petitioner was informed he had failed to request and receive the Association's, "prior written approval" and that, "the construction and maintenance of the deck and fence represents a violation of the restrictive covenants or equitable servitudes applicable to your property." The letter then goes on to threaten suit to, "abate this violation with ten days." (Petitioner's Ex. 7). A second letter from the Association's counsel was sent to the petitioner on June 5, 1990. Enclosed was what counsel stated was a, "copy of the Deed dated November 26, 1935 from James Keilty, Inc. to The James Keilty Realty Corporation which initially created the restrictions on your property. The specific restriction is Number 6 and states, in essence, that no exterior alteration may be made to the property without the prior

written approval of the James Keilty Realty Corporation." Counsel then goes on to state that the right to enforce the covenants was assigned to the Association and that, "the restrictive covenants continued in the Deeds and Declarations as to these properties are a matter of public record and no title researcher worth his salt would conduct a title examination as to these properties without disclosing the existence of these restrictive covenants." (Petitioners Ex. 8, 8A)

As has been noted, the Community Association finally complained to the Zoning Commissioner about a possible zoning violation by letter dated August 3, 1990. At the hearing the protestants offered Exhibits 2 A, B and C into evidence ostensibly to satisfy the requirements of Rule 8 of Appendix G of the BCZR. It is submitted that while the exhibit does relate to Rule 8 it hardly satisfies all of its requirements. For example, Rule 8 requires information regarding the membership of the Association. The exhibit in somewhat misleading fashion does not relate to membership, but rather states that, "The Rodgers Forge Community, Inc., has approximately 1800 homes with the Community." Of course, the number of homes is not indicative of the membership. Indeed, in his testimony Mr. Grauel stated that the paying members calculated on each home being a member, represented 40-45% of the homes in Rodgers Forge. However, when pressed he further testified that paying members could include as many as 730 apartment dwellers. This could mean that the Association members who represented homeowners could be as low as approximately 20%. This becomes important because it shows the Association does not represent even a semblance of a majority of the homeowners in Rodgers Forge and that it should not be considered as speaking for the community. While it seeks to paint itself as broad based and well organized it is well to note that the Zoning Committee does not appear to have been in existence prior to June 10, 1992, just eight days before the hearing. Further,

in adopting a Resolution as to its position -- again on June 10, 1992, it asserts that:

- The interests of the individual members of the Community Association would be materially harmed by the granting of this petition
- Petitioner will not experience practical difficulty or unnecessary hardship from the denial of the Petition.

Despite the above there is not one scintilla of evidence in the record from either of the two witnesses presented (Mr. Grauel or Ms. Mimi Wood) relating to the second position of the Association. As to the first position there is no empirical evidence. Instead, there is only the self-serving testimony of both witnesses that somehow the \$3700.00 improvement the petitioner built is objectionable because it violates covenants applicable to Rodgers Forge and to his property and that it reduces property values.

In his testimony Mr. Grauel noted he was President of the Association and that the, "covenants" required the petitioners to get the approval of its Architectural Committee before they could build any improvements. The Protestants did not offer any specific covenants at the hearing. Instead, through Mr. Grauel, they presented a document entitled, "Covenants and Building Restrictions," which states in pertinent part:

NO RESIDENTIAL STRUCTURE SHALL BE ERECTED, PLACED OR ALTERED ON ANY BUILDING PLOT IN THIS SUBDIVISION UNTIL THE EXTERNAL DESIGN AND LOCATION THEREOF HAVE BEEN APPROVED IN WRITING BY THE JAMES KEILTY REALTY CORPORATION, ITS SUCCESSORS AND ASSIGNS.

IF THE PARTIES HERETO OR ANY OF THEM, THEIR SUCCESSORS, HEIRS OR ASSIGNS AS THE CASE MAY BE SHALL VIOLATE, OR ATTEMPT TO VIOLATE, ANY OF THE COVENANTS HEREIN IT SHALL BE LAWFUL FOR ANY OTHER PERSON OR PERSONS OWNING ANY REAL PROPERTY SITUATED IN THIS DEVELOPMENT OR SUB-DIVISION TO PROSECUTE AT LAW OR IN EQUITY AGAINST THE PERSON OR PERSONS VIOLATING AT ATTEMPTING TO VIOLATE ANY SUCH COVENANT AND EITHER TO PREVENT HIM OR THEM FROM SO DOING OR TO RECOVER DAMAGES OR OTHER DUES FOR SUCH VIOLATION.

These two statements are contained in restrictive covenants which are referred to in every deed to property in Rodgers Forge....

Mr. Granel testified the document was not mailed to property owners but was delivered by, "block captains." He could not name the block captain for the petitioner's home which itself is within a block of the witnesses' house.

Mr. Granel's testimony became even more suspect when asked to produce a copy of any specific covenant. He could not do so. When asked to identify the original covenant contained in a deed dated November 26, 1915 (Petitioner's Ex. 8B) he could not do so. This, after the document was objected to but was later admitted into evidence when it was shown to have been transmitted to the petitioners by protestant's counsel with a letter (Petitioner's Ex. 8A) characterizing it as a "copy of the Deed dated November 25, 1915 from James Keely, Inc. to the James Keely Realty Corporation which initially created the restrictions on your property." Once the document was admitted Mr. Granel could not explain and knew nothing about the language or the bottom of the fourth page which reads:

That is agreed that the covenants and agreements above expressed shall be held to run with and bind the property hereby leased and all subsequent owners and occupiers thereof until December 31, 1960, when they shall cease. (Emphasis supplied)

As to the testimony of the witness Wood who is a member of the Association, it was presented as expert testimony because she was a real estate salesperson. The Board specifically stated it would not allow her to testify as an expert on property valuation, yet she stated unbelievably that the addition of the petitioners \$3700.00 improvement would reduce property values in Rodgers Forge. She opined that the improvement, "derogated" the uniformity of homes in Rodgers Forge to the detriment of the community and that it detracted from the aesthetic value of the property. When asked to do so she could not identify uniformity with any degree of specificity. The truly self-serving nature of Ms. Woods

testimony was clearly demonstrated when she was asked if the property on Hopkins Road (Ex. 1-1) derogated the uniformity of the neighborhood to the detriment of its residents. Despite the fact that the photograph shows there are two additions to the original deck which cover the entire back yard and that the last portion is about 20 feet in length she replied it did not derogate uniformity because the last portion was resting on the ground. Finally, with respect to Ms. Wood's testimony it is submitted it should be accorded little weight since there is no documentary evidence presented to support her, "expert," testimony and since it is clearly self-serving and argumentative.

DISCUSSION AND CONCLUSIONS

With the above statutory background the Deputy Zoning Commissioner cites McLean v. Soley, 270 Md 208 (1973), a case where a variance was granted, for the proposition that to prove practical difficulty for an area variance, the petitioners must show:

1. whether strict compliance with requirement would unreasonably prevent the use of property for a permitted purpose or render conformance unnecessarily burdensome;
2. whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and,
3. whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

The Deputy Zoning Commissioner's decision then concludes that:

After due consideration of the testimony and arguments presented, there is insufficient evidence to allow a finding that the Petitioners would experience practical difficulty or unreasonable hardship if the requested variance were denied.... The Petitioners have failed to show that compliance would unreasonably prevent the use of the property or be unnecessarily burdensome.

It is respectfully submitted that the above decision is in error and must be reversed. First of all, while it contains a heading, "Findings of Fact and Conclusions of Law," there are no findings of fact to which the petitioners may refer for rebuttal. Instead there is only a recitation of what witnesses said. As to conclusions of law, the only real conclusion is that the petitioners have failed in their burden. It is a conclusion that is unsupported by pertinent case law and the record made.

It must be stressed that the variance sought in this case is a narrow and restricted one and it is well settled that variances pertain to such matters as area, height or setbacks are much less drastic than variances affecting the use of property. This is so because the variance requested in no way changes the character of the zoned district, as would be the case if a residential use were changed to an industrial use. (See Buschman, supra a Baltimore County case for a good discussion of the issue.) See also Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md App. 28 (1974) cited in the decision below. Anderson is completely distinguishable from this case on the facts and the result supports petitioners case rather than militates against it.

In Anderson, supra, the zoning ordinance required that the petitioners

show that practical difficulty and unnecessary hardship would result if the variance was not granted. The Court of Special Appeals reversed the County Appeal Board which had granted the variance for multiple dwellings solely on the basis of practical difficulty noting that unlike those jurisdictions (such as Baltimore County) where either practical difficulty or unreasonable hardship can support the grant of a variance Chesapeake Beach's zoning ordinance required both. The case clearly supports the averment that practical difficulty is not as exacting a standard as unnecessary hardship.

A further review of the case law, none of which is set forth in the decision below, leads one inescapably to the conclusion that the petition for variance here should be granted. In Turner v. Hammond, 270 Md 41, 310 A2d 543 (1973) the Court of Appeals reversed the Wicomico County Circuit Court which had affirmed the decision of the Board of Zoning Appeals denying a special use exception, (remember "use" exceptions are construed more strictly than "area" variances). In Turner, a developer sought to build 197 garden apartments in an residential area where churches, nursing homes, hospitals, boarding houses, etc., were allowed. The Board of Appeals as in the decision below subjectively found that the proposed use did not conform to the pertinent criteria, without bothering to find the facts of record. The Court of Appeals reversed saying:

We think the "reasons" given by the Board for denying the application suggest a rather cavalier attitude with respect to its duties and responsibilities. It made no findings of fact worthy of the name and we think citizens are entitled to something more than a boiler plate resolution.

The decision below is the same kind of subjective, boiler plate determination.

See also Ocean Hideaway Condominiums Assoc. v. Boardwalk Plaza Venture, where in reversing the Worcester County Circuit Court the Maryland Court of Special Appeals said:

One sentence conclusions which contained nothing more than positive statements of each of the conditions precedent to approval by Board of Zoning Appeals of special exception were inadequate.

The same is true of the decision below in this case.

It is submitted that the record made in this case clearly establishes that if the petitioners were not granted the variance they would experience, "practical difficulty" within the meaning of Section 307 of the Baltimore County Zoning Regulations. This proceeding does not involve any overriding change in the character of the neighborhood. There is no variance in set-back to allow for industrial use. Further, there is no hardship predicated on the inability to receive monetary gain. All that is involved is one family who had only recently purchased 218 Hopkins Road, and who sought to adapt their backyard to their family needs. The evidence establishes that the improvement to the back yard was one of several made since the petitioners purchased the property, and cost \$3,700.00 which petitioners borrowed. However, unlike the other improvements it was necessary because the backyard was not usable. It was full of drainage runs and was made unsafe by the neighbor's dog who bit the petitioner and frightened his children. Finally, the improvement made to the backyard was not a spontaneous, unilateral act. The petitioners took the trouble to secure their neighbors' approval and they made certain that the improvement fitted in with what was happening in the community by looking at other homes and improvements. They and their neighbors believed then and now that the improvement added to the value and beauty of their house and was of

benefit to the neighborhood generally. (Petitioners Ex. 10). When they built it the petitioners hired a licensed builder in the belief and expectation that all County requirements would be met.

In the face of the above facts, which are un rebutted in the record, and with no viable contradictory evidence it is inconceivable that one could conclude there is, "insufficient evidence to allow a finding that the Petitioners would experience practical difficulty...." or that, "The Petitioners have failed to show that compliance would unreasonably prevent the use of the property or be unnecessarily burdensome." It must be clear to any reasonable consideration of the issue that if the variance is not granted the petitioners will have lost \$3,700.00, plus whatever it costs to remove the existing structure and the white gravel that lies beneath it. Further, when the deck is removed the conditions that made the backyard unusable in the first instance will recur and the property will be less desirable.

Finally, it is interesting and necessary to note that the decision below refers to "restrictions and covenants that govern Rodgers Forge" and that, "said covenants and restrictions are on entirely different matters and whether or not the Petitioners deck conforms with the covenants for Rodgers Forge is not an issue raised before the Deputy Zoning Commissioner." Certainly, we would agree with the legal premise but the Board should know that this case would not be here but for the insistence on the part of persons representing the community association, that before any resident of Rodgers Forge can build anything on his property the covenants in the deed require approval of the Association's Architectural Committee. Indeed, at the hearing protestants stressed that the alleged covenants were the crux of their objections and insisted the Board consider the variance in the light

of the alleged covenants.

The fact is such covenants do not exist. They expired under the terms of the deed in 1960. (Petitioners' Ex. 8B) Further, the petitioner was neither aware that there was a community association, much less restrictive covenants when the improvement was built, and certainly, there were no restrictive covenants in his deed, (Petitioners Ex. 5), and none were found in the title search (Petitioners' Ex. 6). Despite this, the association's representative threatened suit to enforce the covenants, belittled the Title Attorney, and when that bluff failed, only then did he complain to the County about the improvement.

At the hearing in this matter protestants took the unsupportable position that despite the clear terms of the 1915 deed creating the covenants and specifically providing they would cease in 1960, somehow the covenants would continue to apply in Rodgers Forge and more particularly to petitioners' property. They cited Turner v. Brocato, 111 A2d 855, 206 Md 336 (1955) and an unreported Board of Zoning Appeals case, Steven Alpern, Case No. 88-111-A. Neither case supports protestant's position. In Brocato, the court was considering whether or not property conveyed to a party without restrictive covenants but located in a subdivision where a majority of the properties were conveyed with restrictive covenants, would be subject to the restrictive covenants. The court decided that even though the property in issue did not contain restrictive covenants it was subject to the covenants because the evidence showed the developer intended all lots to be subject to the restrictive covenants. Of course, this is not true in this case. Here, the developer specifically and clearly provided that the covenants would cease in 1960. He never intended that they should continue after that date however much the Association would wish it to be true and despite the arrogance and illegality of browbeating residents into believing the covenants still exist by misinforming them.

As to Alpern, supra, it is a simple variance case where the Board had before it whether or not an enclosed side porch should be allowed. On the record made it denied the application. In doing so it specifically noted it was not passing on the validity of the alleged covenants in Rodgers Forge. It is impossible to understand how anyone could construe this case to support the view that the Rodgers Forge covenants now exist even though by their terms they ceased in 1960. It should be noted that Dahl v. County Board of Appeals and Herman H. Baylus, 265A 2d 227, 258 Md 157 is cited in Alpern. That case is completely distinguishable from the instant case on the facts. In Dahl the Baltimore County Zoning Board with the Circuit Court affirming, granted the rezoning of property from R-6 residential to industrial M-L zoning. In doing so it granted certain size and setback requirements on the basis that they were, "reasonable and essential to prevent practical difficulty and hardship in developing the property." The Maryland Court of Appeals reversed noting that the "difficulties" and "hardships" to which the Board referred were not spelled out and that they involved the petitioner's financial hardship in developing the property. The Court of Appeals then held, "The mere fact that the variance would make the property more profitable is not a sufficient ground to justify a relaxation of setback requirements." It found the Board's decision arbitrary and capricious. As one can readily see the facts in Dahl are far removed from the facts in this case. As has been noted, here, there is no rezoning from residential to industrial, no variance in setback requirements to allow for industrial use and no hardship predicated on monetary gain. There is only one family who had recently purchased a residential property and sought to improve it by borrowing \$3700.00 to build a free standing deck in their backyard which had been unusable.